

TABLE OF CHAPTERS

REISSUE REVISED STATUTES

Chapter Number	No. of Articles	Chapter Number	No. of Articles
1. Accountants	1	45. Interest, Loans, and Debt	12
2. Agriculture	57	46. Irrigation and Regulation of Water	17
3. Aeronautics	8	47. Jails and Correctional Facilities	10
4. Aliens	1	48. Labor	35
5. Apportionment	Transferred or Repealed	49. Law	18
6. Assignment for Creditors	Repealed	50. Legislature	15
7. Attorneys at Law	2	51. Libraries and Museums	8
8. Banks and Banking	28	52. Liens	22
9. Bingo and Other Gambling	10	53. Liquors	5
10. Bonds	12	54. Livestock	28
11. Bonds and Oaths, Official	2	55. Militia	7
12. Cemeteries	14	56. Milldams	Repealed
13. Cities, Counties, and Other Political Subdivisions	32	57. Minerals, Oil, and Gas	15
14. Cities of the Metropolitan Class	21	58. Money and Financing	8
15. Cities of the Primary Class	13	59. Monopolies and Unlawful Combinations	18
16. Cities of the First Class	11	60. Motor Vehicles	33
17. Cities of the Second Class and Villages	10	61. Natural Resources	2
18. Cities and Villages; Laws Applicable to All	33	62. Negotiable Instruments	3
19. Cities and Villages; Particular Classes	54	63. Newspapers and Periodicals	1
20. Civil Rights	5	64. Notaries Public	4
21. Corporations and Other Companies	29	65. Oaths and Affirmations	Transferred
22. Counties	4	66. Oils, Fuels, and Energy	22
23. County Government and Officers	39	67. Partnerships	4
24. Courts	13	68. Public Assistance	20
25. Courts; Civil Procedure	35	69. Personal Property	27
26. Courts, Municipal; Civil Procedure	Transferred or Repealed	70. Power Districts and Corporations	21
27. Courts; Rules of Evidence	13	71. Public Health and Welfare	96
28. Crimes and Punishments	16	72. Public Lands, Buildings, and Funds	25
29. Criminal Procedure	47	73. Public Lettings and Contracts	6
30. Decedents' Estates; Protection of Persons and Property	43	74. Railroads	16
31. Drainage	10	75. Public Service Commission	11
32. Elections	17	76. Real Property	35
33. Fees and Salaries	1	77. Revenue and Taxation	64
34. Fences, Boundaries, and Landmarks	3	78. Salvages	Repealed
35. Fire Companies and Firefighters	14	79. Schools	27
36. Fraud and Voidable Transactions	8	80. Servicemembers and Veterans	9
37. Game and Parks	17	81. State Administrative Departments	37
38. Health Occupations and Professions	40	82. State Culture and History	7
39. Highways and Bridges	28	83. State Institutions	12
40. Homesteads	1	84. State Officers	16
41. Hotels and Inns	2	85. State University, State Colleges, and Postsecondary Education	28
42. Households and Families	13	86. Telecommunications and Technology	12
43. Infants and Juveniles	48	87. Trade Practices	8
44. Insurance	92	88. Warehouses	6
		89. Weights and Measures	2
		90. Special Acts	5
		91. Uniform Commercial Code	12

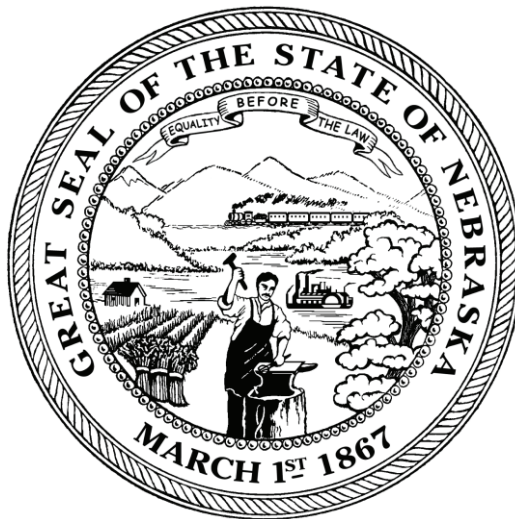


REVISED STATUTES OF NEBRASKA

2019 SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 52, INCLUSIVE



CITE AS FOLLOWS

R.S.SUPP.,2019

COPYRIGHT, 2019

by

Joanne M. Pepperl
Revisor of Statutes

For the benefit of the
State of Nebraska

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, 1A, and 1B	2012
Volumes 2 and 2A.....	2016
Volume 3.....	2016
Volumes 3A and 3B.....	2010
Volumes 4, 4A, and 4B	2018
Volumes 5 and 5A.....	2014
Volume 6.....	2001
Cross Reference Tables.....	2000

Joanne M. Pepperl
Revisor of Statutes
(402) 471-2225
jpepperl@leg.ne.gov

CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2019 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundred Sixth Legislature, First Session, 2019, 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
Revisor of Statutes

Lincoln, Nebraska
August 1, 2019

EDITORIAL STAFF

Joanne M. Pepperl	Revisor of Statutes
Marcia M. McClurg	Assistant Revisor of Statutes
Neal P. Nelson	Associate Revisor of Statutes
Micah L. Uher	Associate Revisor of Statutes
Mark A. Ludwig	Associate Revisor of Statutes
Tammy Barry	Senior Legal Counsel
Andrew J. Conroy	Legal Counsel
Joselyn D. Luedtke	Legal Counsel
Jane Plettner-Nielson	Statute Technician
Suzanne Tesina	Assistant Statute Technician
Brandi Thorn	Assistant Statute Technician
Marilee McPherson	Assistant Statute Technician
Megan Rothluebber	Assistant Statute Technician
Gaylena Gibson	Assistant Statute Technician
Catlin Bates	Assistant Statute Technician



ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

Under this provision, in a criminal prosecution, the State must prove every ingredient of an offense beyond a reasonable doubt and may not shift the burden of proof to the defendant by presuming an ingredient upon proof of the other elements of the offense. Because the burden of proof always remains with the State, it cannot comment on a defendant's failure to produce evidence to refute an element of the crime, because doing so could erroneously lead the jury to believe that the defendant carried the burden of introducing evidence. The exception to this rule is when the defendant voluntarily assumes some burden of proof by asserting the defenses of alibi, of self-defense, and of others, relying on facts that could be elicited only from a witness who is not equally available to the State. While a defendant may invite the State to explain why it chose not to submit certain items for testing, a defendant in a criminal case can never open the door to shift the burden of proof. A defendant is entitled to inquire about weaknesses in the State's case, but this does not open the door for the State to point out that the defendant has not proved his or her innocence. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not violate the substantive due process rights of a farmer who began irrigation after the 10-year period, because the provision had a substantial relation to the general welfare, in that it ensured an adequate supply of ground water and the window of time was reasonable due to the existence of limitations on "New Groundwater Irrigated Acres" in the district after that time. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

A look-back provision of a natural resources district's rules governing land irrigation, which allowed acres that had been actually irrigated any year during a particular 10-year period to be certified, did not, under a rational basis test, violate the equal protection rights of a farmer who began irrigation after the 10-year period, because the provision was rationally related to the goal of ground water conservation. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

Article I, sec. 7.

A search warrant authorizing the search of a murder suspect's residence for "any and all firearms" sufficiently described the things to be seized with particularity; even though the particular caliber of the firearm was not specified, the warrant still told police with reasonable clarity which items to search for and seize and did not give police open-ended discretion. *State v. Baker*, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision demands that a warrant describe with particularity (1) the place to be searched and (2) the persons or things to be seized. *State v. Baker*, 298 Neb. 216, 903 N.W.2d 469 (2017).

The particularity requirement of this provision is distinct from, but closely related to, the requirement that a warrant be supported by probable cause. A warrant may be sufficiently particular even though it describes the items to be seized in broad or generic terms if the description is as particular as the supporting evidence will allow; but the broader the scope of a warrant, the stronger the evidentiary showing must be to establish probable cause. *State v. Baker*, 298 Neb. 216, 903 N.W.2d 469 (2017).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 12, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017).

The Nebraska Supreme Court typically construes the enumerated rights in the Nebraska Constitution consistently with their counterparts in the U.S. Constitution as construed by the U.S. Supreme Court. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

The requirement of ready mobility for the automobile exception to the warrant requirement of this provision is met whenever a vehicle that is not located on private property is capable or apparently capable of being driven on the roads or highways. This inquiry does not focus on the likelihood of the vehicle's being moved under the particular circumstances and is generally satisfied by the inherent mobility of all operational vehicles. It does not depend on

ANNOTATIONS

whether the defendant has access to the vehicle at the time of the search or is in custody, nor on whether the vehicle has been impounded. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate determination of probable cause to perform a warrantless search is reviewed de novo, and findings of fact are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial judge. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

The ultimate touchstone of this provision is reasonableness. Searches and seizures must not be unreasonable. Searches without a valid warrant are per se unreasonable, subject only to a few specifically established and well-delineated exceptions. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

An officer's request that an individual step out of a parked vehicle does not amount to a seizure when the totality of the circumstances surrounding the officer's request would not have made a reasonable person believe that he or she was not free to leave. *State v. Milos*, 294 Neb. 375, 882 N.W.2d 696 (2016).

When an individual places his or her hand in the same pocket that an officer is trying to search, thereby interfering with the officer's ability to search, the individual sufficiently demonstrates a withdrawal of consent to search. *State v. Milos*, 294 Neb. 375, 882 N.W.2d 696 (2016).

Article I, sec. 9.

A juvenile offender's sentence did not constitute cruel and unusual punishment where it allowed for release 17 years before his life expectancy. *State v. Smith*, 295 Neb. 957, 892 N.W.2d 52 (2017).

It is unconstitutional for a state to impose a sentence of life imprisonment without parole on a juvenile convicted of a nonhomicide offense. *State v. Smith*, 295 Neb. 957, 892 N.W.2d 52 (2017).

Nebraska's sentence of life imprisonment is effectively life imprisonment without parole under the rationale of *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), because it provides no meaningful opportunity to obtain release. *State v. Thieszen*, 295 Neb. 293, 887 N.W.2d 871 (2016).

The mere existence of a remote possibility of parole does not keep Nebraska's sentencing scheme from falling within the dictates of *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). *State v. Thieszen*, 295 Neb. 293, 887 N.W.2d 871 (2016).

Article I, sec. 12.

When a court sua sponte suggests a mistrial, it is not too onerous to require defense counsel to clearly and timely state whether he or she objects to the court's consideration of a mistrial when given an opportunity to do so. *State v. Leon-Simaj*, 300 Neb. 317, 913 N.W.2d 722 (2018).

Section 60-6,197.04 is constitutionally valid and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and this provision or Neb. Const. Art. I, sec. 7, as section 60-6,197.04 mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017).

Article I, sec. 20.

"Debt," as stated in state constitutional prohibitions of imprisonment for debt, is generally viewed as an obligation to pay money from the debtor's own resources, which arose out of a consensual transaction between the creditor and the debtor. *Sickler v. Sickler*, 293 Neb. 521, 878 N.W.2d 549 (2016).

Imprisonment for contempt for the failure to comply with the order of property division in a dissolution decree does not violate this provision. *Sickler v. Sickler*, 293 Neb. 521, 878 N.W.2d 549 (2016).

Whether an obligation is a "debt" depends on the origin and nature of the obligation and not on the manner of its enforcement. *Sickler v. Sickler*, 293 Neb. 521, 878 N.W.2d 549 (2016).

Article II, sec. 1.

The constitutional principle of separation of powers demands that in the course of any overlapping exercise of the three branches' powers, no branch may significantly impair the ability of any other in its performance of its essential functions. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

ANNOTATIONS

Article IV, sec. 13.

The "conditions clause" permits the Legislature to enact laws placing conditions on when a committed offender is eligible for parole. *Adams v. State*, 293 Neb. 612, 879 N.W.2d 18 (2016).

Article V, sec. 1.

By creating and regulating Judicial Branch Education, the Nebraska Supreme Court is exercising a power constitutionally committed to it. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Article V, sec. 2.

Under this provision, the Nebraska Supreme Court has only such appellate jurisdiction as may be provided by law, meaning that in order for it to have jurisdiction over an appeal, appellate jurisdiction must be specifically provided by the Legislature. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

The Nebraska Constitution allocates the regulation of appellate jurisdiction to the Legislature, not to the Nebraska Supreme Court. *Heckman v. Marchio*, 296 Neb. 458, 894 N.W.2d 296 (2017).

STATUTES OF THE STATE OF NEBRASKA

2-4807.

While creditors subject to this section are required to provide notice of the availability of mediation, participation in mediation is optional. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

2-4808.

While creditors subject to section 2-4807 are required to provide notice of the availability of mediation, participation in mediation is optional. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

7-110.

An individual assignee of a corporation's or other distinct legal entity's cause of action cannot bring such action pro se. *Zapata v. McHugh*, 296 Neb. 216, 893 N.W.2d 720 (2017).

13-903.

Loss of employment does not qualify as a loss of property under the Political Subdivisions Tort Claims Act. *Craw v. City of Lincoln*, 24 Neb. App. 788, 899 N.W.2d 915 (2017).

13-910.

Cases construing the discretionary function exception under the State Tort Claims Act apply as well to the discretionary function exception granted to political subdivisions in the Political Subdivisions Tort Claims Act. *Amend v. Nebraska Pub. Serv. Comm.*, 298 Neb. 617, 905 N.W.2d 551 (2018).

A county does not have a nondiscretionary duty to provide a safe working environment where the dangerous condition present is readily apparent to persons likely to be injured by the dangerous condition. *McGauley v. Washington County*, 297 Neb. 134, 897 N.W.2d 851 (2017).

A county's decision to grant a quarry easement for the purpose of building up a county road that was at risk of flooding came within the discretionary function exception to the waiver of sovereign immunity under the Political Subdivisions Tort Claims Act. *McGauley v. Washington County*, 297 Neb. 134, 897 N.W.2d 851 (2017).

13-911.

If during a vehicular pursuit a passenger takes some action that makes him or her become a person sought to be apprehended, the passenger does not remain an innocent third party by virtue of the fact that law enforcement began the pursuit to apprehend the driver only. *Fales v. County of Stanton*, 297 Neb. 41, 898 N.W.2d 352 (2017).

ANNOTATIONS

13-916.

Where a county's liability insurance policy did not cover the underlying event, there was no waiver of sovereign immunity regardless of the retained insurance limit. *City of Lincoln v. County of Lancaster*, 297 Neb. 256, 898 N.W.2d 374 (2017).

13-1712.

A district court order setting aside, annulling, vacating, or reversing a siting approval decision in a review pursuant to this section is a final order. *Butler Cty. Landfill v. Butler Cty. Bd. of Supervisors*, 299 Neb. 422, 908 N.W.2d 661 (2018).

A failure to comply with the requirement under this section to petition for a hearing before the district court within 60 days after notice of the siting body's decision deprives the district court of jurisdiction to review a siting approval decision. *Butler Cty. Landfill v. Butler Cty. Bd. of Supervisors*, 299 Neb. 422, 908 N.W.2d 661 (2018).

15-840.

A timely filing of a tort claim under the Political Subdivisions Tort Claims Act is not sufficient to satisfy the filing requirements of this section for purposes of the application of the Nebraska Wage Payment and Collection Act, because the two underlying claims are separate and distinct. *Craw v. City of Lincoln*, 24 Neb. App. 788, 899 N.W.2d 915 (2017).

20-151.

Lay witness testimony is admissible to show whether a person is "deaf or hard of hearing" under subsection (3) of this section. *State v. Martinez*, 295 Neb. 1, 886 N.W.2d 256 (2016).

21-148.

As a result of this section, no action can be maintained by or against a limited liability company after it has completed the winding up of its activities. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

This section is, in part, a survival statute for limited liability companies that extends companies' ability to sue and be sued as part of the winding-up powers. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

21-155.

This section codifies the internal affairs doctrine, as discussed in the Restatement (Second) of Conflict of Laws section 302 (1971). *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

Under this section, the internal affairs doctrine requires that the law of a fully dissolved foreign limited liability corporation's state of incorporation govern its amenability. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

While this section references the Uniform Limited Liability Company Act, it was, instead, patterned after the Revised Uniform Limited Liability Company Act, and it incorporates the revised act's comments explaining the section. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

23-2511.

A civil service commission acts in a judicial manner when deciding county employee appeals. *Douglas County v. Archie*, 295 Neb. 674, 891 N.W.2d 93 (2017).

A civil service commission deciding county employee appeals under this section acts in an adjudicatory fashion akin to a trial court, holding an appeal hearing at which the employee shall be entitled to appear personally, be represented by counsel, cross-examine witnesses, and produce evidence. *Douglas County v. Archie*, 295 Neb. 674, 891 N.W.2d 93 (2017).

ANNOTATIONS

24-205.01.

Under subsection (1) of section 84-712.01, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of this section, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to section 84-712.01, although subdivision (2)(a) of this section contemplated promulgation of rules regarding the confidentiality of Judicial Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

24-302.

Section 30-810 provides special procedures for settling wrongful death claims, but it is silent on wrongful death actions and subrogation. Accordingly, under section 48-118.01, wrongful death actions and, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. *In re Estate of Evertson*, 295 Neb. 301, 889 N.W.2d 73 (2016).

24-303.

A district court possesses jurisdiction only so long as it is holding court in conformity with the law; and when, without excuse, it disregards the law and attempts to hold court in any other place than that prescribed by statute, its acts become coram non iudice. *Burns v. Burns*, 296 Neb. 184, 892 N.W.2d 135 (2017).

All nonjury trials and hearings, except those conducted pursuant to subsection (2) of this section, must take place in the county in which the cause is pending. *Burns v. Burns*, 296 Neb. 184, 892 N.W.2d 135 (2017).

24-517.

A parent can challenge the legality of an adoption by objecting to the proceeding in county court. But seeking a writ of habeas corpus is an equally available remedy for a parent's claim that his or her child is being illegally detained for an adoption. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016).

Despite the Legislature's grant of exclusive jurisdiction over adoption matters to county or juvenile courts under subsection (11) of this section, the privilege of the writ of habeas corpus is part of Nebraska's organic law. Thus, district courts have general, overlapping jurisdiction over an adoption challenge when a parent claims his or her child is being illegally detained for an adoption in a habeas proceeding. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016).

The Legislature cannot limit or take away the broad and general jurisdiction of the district courts, as conferred by the Nebraska Constitution. But it can give county courts concurrent original jurisdiction over the same subject matter. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016).

When a district court has exercised jurisdiction over a habeas proceeding to challenge the legality of an adoption before an adoption proceeding is filed in county court, the doctrine of jurisdictional priority requires the district court to retain jurisdiction over the matter to the exclusion of the county court until it determines whether the child is being legally detained for an adoption. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016).

25-202.

This section is a general statute of limitations that must yield to the more specific limitation provided in section 25-218 regarding inverse condemnation actions brought against the State. *Hike v. State*, 297 Neb. 212, 899 N.W.2d 614 (2017).

In the context of a regulatory taking, a cause of action for inverse condemnation begins to accrue when the injured party has the right to institute and maintain a lawsuit due to a city's infringement, or an attempt at infringement, of a landowner's legal rights in the property. *Strode v. City of Ashland*, 295 Neb. 44, 886 N.W.2d 293 (2016).

25-206.

The time limitations provided for in this section and section 25-218 do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. *McCoy v. Albin*, 298 Neb. 297, 903 N.W.2d 902 (2017).

ANNOTATIONS

25-218.

The time limitations provided for in section 25-206 and this section do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under section 48-665. *McCoy v. Albin*, 298 Neb. 297, 903 N.W.2d 902 (2017).

Inverse condemnation actions against the State must be commenced 2 years from the time of taking or damaging. *Hike v. State*, 297 Neb. 212, 899 N.W.2d 614 (2017).

Section 25-202 is a general statute of limitations that must yield to the more specific limitation provided in this section regarding inverse condemnation actions brought against the State. *Hike v. State*, 297 Neb. 212, 899 N.W.2d 614 (2017).

25-228.

This section does not apply to an action that was already barred under the existing statutes of limitations at the time this section was enacted in 2012. *Doe v. McCoy*, 297 Neb. 321, 899 N.W.2d 899 (2017).

25-301.

The plaintiff was the real party in interest where the defendant's legal malpractice caused harm to the plaintiff's company and where throughout litigation, the parties acknowledged and recognized the plaintiff's interest in the judgment. *LeRette v. Howard*, 300 Neb. 128, 912 N.W.2d 706 (2018).

The assignee of a chose in action is the proper and only party who can maintain the suit thereon; the assignor loses all right to control or enforce the assigned right against the obligor. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

The purpose of the "real party in interest" statute is to prevent the prosecution of actions by persons who have no right, title, or interest in the cause. *Cattle Nat. Bank & Trust Co. v. Watson*, 293 Neb. 943, 880 N.W.2d 906 (2016).

25-303.

The assignee of a chose in action acquires no greater rights than those of the assignor, and takes it subject to all the defenses existent at the time. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

25-319.

A prison inmate, who sought to bring class action claims for declaratory and injunctive relief alleging that conditions at the Nebraska State Penitentiary, including overcrowding, cell assignments, flooding, and inadequate showering conditions, violated his rights, lacked commonality with members of the purported class, and thus the inmate was unqualified to represent the class, where claims became moot after he was transferred to another correctional facility. *Nesbitt v. Frakes*, 300 Neb. 1, 911 N.W.2d 598 (2018).

25-323.

Necessary parties are parties who have an interest in the controversy, and should ordinarily be joined unless their interests are separable so that the court can, without injustice, proceed in their absence. Indispensable parties are parties whose interest is such that a final decree cannot be entered without affecting them, or that termination of controversy in their absence would be inconsistent with equity. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

This section imposes a duty on the court to require an indispensable party be added to the litigation sua sponte when one is absent and statutorily deprives the court of subject matter jurisdiction over the controversy absent the presence of all indispensable parties. *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 894 N.W.2d 221 (2017).

25-516.01.

The voluntary appearance of a party is equivalent to service of process for purposes of personal jurisdiction; parties cannot confer subject matter jurisdiction on a court by waiving statutory requirements for a court to obtain

ANNOTATIONS

jurisdiction through a voluntary appearance. *J.S. v. Grand Island Public Schools*, 297 Neb. 347, 899 N.W.2d 893 (2017).

Judicially noticed filings and the bill of exceptions in a prior modification proceeding between the parties showed that the defendant made a general appearance in the subsequent modification proceeding by asking the trial court to vacate an order, to disqualify the plaintiff's counsel, and to strike the complaint. *Burns v. Burns*, 293 Neb. 633, 879 N.W.2d 375 (2016).

25-531.

The lis pendens statute does not operate to prevent a subsequent purchaser from fully participating as a party in a quiet title action affecting the subject property. *Brown v. Jacobsen Land & Cattle Co.*, 297 Neb. 541, 900 N.W.2d 765 (2017).

25-536.

If a Nebraska court's exercise of personal jurisdiction would comport with the Due Process Clause of the 14th Amendment to the U.S. Constitution, it is authorized by subsection (2) of this section. *Hand Cut Steaks Acquisitions v. Lone Star Steakhouse*, 298 Neb. 705, 905 N.W.2d 644 (2018).

25-601.

A motion for summary judgment can be a final submission that will prevent voluntary dismissal under this section. *Millard Gutter Co. v. American Family Ins. Co.*, 300 Neb. 466, 915 N.W.2d 58 (2018).

25-824.

Where an attorney pursues a motion for recusal that is frivolous or made in bad faith, the district court has jurisdiction to enter a sanction under this statute when it is timely requested, regardless of whether the district court lacked jurisdiction to adjudicate the merits of the underlying dispute. *State of Florida v. Countrywide Truck Ins. Agency*, 294 Neb. 400, 883 N.W.2d 69 (2016).

25-840.01.

The plaintiff's failure to request a retraction under this section constitutes an affirmative defense which must be raised by the defendant prior to trial. *Funk v. Lincoln-Lancaster Cty. Crime Stoppers*, 294 Neb. 715, 885 N.W.2d 1 (2016).

25-1011.

No substantial right was affected where the judgment debtor unsuccessfully objected to a garnishment pursuant to this section. *Shawn E. on behalf of Grace E. v. Diane S.*, 300 Neb. 289, 912 N.W.2d 920 (2018).

25-1030.

If a garnishor fails to file an application to determine the garnishee's liability within 20 days of when the garnishee's answers to interrogatories are filed, this section prescribes an unequivocal and mandatory conclusion that the garnishee shall be released and discharged. *Huntington v. Pedersen*, 294 Neb. 294, 883 N.W.2d 48 (2016).

25-1090.

An order confirming a public sale is a final order, because it both is an order disposing of receivership property and gives the receiver directions. *Priesner v. Starry*, 300 Neb. 81, 912 N.W.2d 249 (2018).

An order of further direction to the receiver to release liens before continuing with the public sale is a final order. *Priesner v. Starry*, 300 Neb. 81, 912 N.W.2d 249 (2018).

25-1116.

The failure of the court to notify counsel of a jury's question is reversible error only if prejudice results. *Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist.*, 298 Neb. 777, 906 N.W.2d 1 (2018).

ANNOTATIONS

25-1127.

Under this section, in the absence of a request by a party for specific findings, a trial court is not required to make detailed findings of fact and need only make its findings generally for the prevailing party. *Cullinane v. Beverly Enters.* - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

25-1129.

A referee's factual findings are entitled to some deference, but no such deference is owed to the referee's conclusions or recommendations. *Becher v. Becher*, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1131.

A district court is not required to make specific findings that a referee's factual findings are against the clear weight of the evidence. *Becher v. Becher*, 299 Neb. 206, 908 N.W.2d 12 (2018).

25-1140.

The party appealing has the responsibility of including within the bill of exceptions matters from the record which the party believes are material to the issues presented for review. *State v. Saylor*, 294 Neb. 492, 883 N.W.2d 334 (2016).

25-1142.

A motion for new trial, under this section, is not an effective motion to terminate the running of time to file notice of an appeal when the court grants a motion for summary judgement. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

25-1144.01.

A motion for new trial filed after the court announced the jury verdict but before the entry of judgment is treated as filed after the entry of judgment and on the day thereof and is an effective terminating motion. *Lindsay Internat. Sales & Serv. v. Wegener*, 297 Neb. 788, 901 N.W.2d 278 (2017).

25-1301.

A final judgment is one that disposes of the case either by dismissing it before hearing is had upon the merits, or after trial by rendition of judgment for the plaintiff or defendant. Conversely, every direction of a court or judge, made or entered in writing and not included in a judgment, is an order. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

25-1315.

This section was implicated in a paternity action initiated for two children where (1) the presumptive father filed a cross-claim against the mother for custody and visitation as to one child and a counterclaim against the State for disestablishment of paternity as to the other child and (2) the district court granted disestablishment of paternity but did not determine the custody issues as to the other child. *State on behalf of Marcelo K. & Rycki K. v. Ricky K.*, 300 Neb. 179, 912 N.W.2d 747 (2018).

This section provides that when a case involves multiple claims or multiple parties, a party may generally only appeal when all claims and the rights of all parties have been resolved. If a court issues an order that is final as to some, but not all, of the claims or parties, such an order is appealable only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such an entry of judgment, orders adjudicating fewer than all claims or the rights of fewer than all the parties are not final and are subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. Thus, absent an entry of judgment under this section, no appeal will lie unless all claims have been disposed as to all parties in the case. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

The trial court should not have certified as final its order resolving a claim against the trustee where the trustee's third-party claim for contribution was unresolved and nothing in the record suggested that a delay of a few months before the third-party complaint would be ready for trial would cause an unusual hardship for the parties. *Rafert v. Meyer*, 298 Neb. 461, 905 N.W.2d 30 (2017).

ANNOTATIONS

This section does not modify final order jurisprudence as it regards orders denying intervention. *Streck, Inc. v. Ryan Family*, 297 Neb. 773, 901 N.W.2d 284 (2017).

In enacting this section, the Legislature did not amend the partition statutes or attempt to change the effect of prior jurisprudence. Both before and after the adoption of this section, section 25-2179 characterized the settlement of all ownership rights as a "judgment" and Nebraska case law characterizes the order as a final order. *Guardian Tax Partners v. Skrupa Invest. Co.*, 295 Neb. 639, 889 N.W.2d 825 (2017).

An order granting a lender's motions for summary judgment to enforce a guaranty, but failing to adjudicate a cross-claim and not directing the entry of final judgment under this section, is not a judgment sufficient to support execution or garnishment in aid of execution. *Cattle Nat. Bank & Trust Co. v. Watson*, 293 Neb. 943, 880 N.W.2d 906 (2016).

25-1329.

A motion for reconsideration is the functional equivalent of a motion to alter or amend a judgment. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

25-1711.

This section governs the taxation of costs in equitable actions and does not require the court to tax costs to the unsuccessful party. *Mock v. Neumeister*, 296 Neb. 376, 892 N.W.2d 569 (2017).

25-1902.

Under this section, the denial of a motion to compel arbitration is a final, appealable order, because it affects a substantial right and is made in a special proceeding. *Cullinane v. Beverly Enters. - Neb.*, 300 Neb. 210, 912 N.W.2d 774 (2018).

An order affecting a substantial right that is issued upon a summary application in an action after judgment is an order ruling on a postjudgment motion in an action. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under section 29-3523 affects a substantial right for purposes of this section. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

Final orders and judgments issued by a county court may be appealed to district court. A district court order affirming, reversing, or remanding an order or judgment of the county court is itself a final order that an appellate court has jurisdiction to review. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order issuing a stay within an action is generally not appealable. But a stay that is tantamount to a dismissal of an action or has the effect of a permanent denial of the requested relief is a final order. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

Generally, an order of dismissal is a final, appealable order. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

The only three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right and which 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 judgment is rendered. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

A determination of the statute of limitations governing the prosecution of a criminal charge has no bearing on the correctness of a speedy trial determination. *State v. Gill*, 297 Neb. 852, 901 N.W.2d 679 (2017).

Even if, in the face of a defendant's insistence, a court refuses to rule on the merits of a motion to quash an information on limitations grounds, the court's refusal to rule would be no more final, for purposes of an appeal, than a ruling on the motion would have been. *State v. Gill*, 297 Neb. 852, 901 N.W.2d 679 (2017).

The illegality of an arrest gives rise only to "collateral" rights and remedies in the underlying criminal action, which are effectively vindicated on appeal from the judgment. *Dugan v. State*, 297 Neb. 444, 900 N.W.2d 528 (2017).

An order that merely holds bond funds in the court and does not state who is entitled to the funds is not a final, appealable order. *State v. McColery*, 297 Neb. 53, 898 N.W.2d 349 (2017).

ANNOTATIONS

Under this section, an order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered. *State v. McColery*, 297 Neb. 53, 898 N.W.2d 349 (2017).

An order disqualifying counsel in a civil case is not a final, appealable order, overruling *Richardson v. Griffiths*, 251 Neb. 825, 560 N.W.2d 430 (1997), and cases relying upon it. *Heckman v. Marchio*, 296 Neb. 458, 894 N.W.2d 296 (2017).

An order imposing a discovery sanction was not a final order; it did not dispose of the whole merits of the case, was not made during a special proceeding, and was not made after a judgment was rendered. *Ginger Cove Common Area Co. v. Wiekhorst*, 296 Neb. 416, 893 N.W.2d 467 (2017).

An order refusing to vacate a discovery sanction order was not a final order, because it did not affect a substantial right. *Ginger Cove Common Area Co. v. Wiekhorst*, 296 Neb. 416, 893 N.W.2d 467 (2017).

The language in *Peterson v. Damoude*, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of this section with the partition procedure mandated by section 25-2179. *Guardian Tax Partners v. Skrupa Invest. Co.*, 295 Neb. 639, 889 N.W.2d 825 (2017).

The denial of a motion to transfer a criminal case from district court to juvenile court is not final and appealable under this section. *State v. Bluett*, 295 Neb. 369, 889 N.W.2d 83 (2016).

An order changing a permanency plan in a juvenile case adjudicated under section 43-247(3)(a) does not necessarily affect a substantial right of the parent for purposes of this section when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re *Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

Juvenile court proceedings are "special proceedings" for purposes of this section. In re *Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under section 43-247(3)(a) do not typically affect a substantial right for purposes of appeal under this section, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re *Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

Under this section, an order in a juvenile case adjudicated under section 43-247(3)(a), which order continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re *Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

Orders overruling a guarantor's and a coguarantor's objections to writs of execution and garnishment were orders made on summary application after judgment was rendered and affected the guarantor's and coguarantor's substantial rights and, thus, were final and appealable. *Cattle Nat. Bank & Trust Co. v. Watson*, 293 Neb. 943, 880 N.W.2d 906 (2016).

A finding of abandonment under section 43-104(2)(b) in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the need for the abandoning parent's consent and authorizes the execution of substitute consent, and such finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re *Adoption of Madysen S. et al.*, 293 Neb. 646, 879 N.W.2d 34 (2016).

An order overruling a motion to terminate parental rights is a final, appealable order. In re *Interest of Isabel P. et al.*, 293 Neb. 62, 875 N.W.2d 848 (2016).

A final, appealable order must affect a substantial right. In re *Guardianship of Aimee S.*, 24 Neb. App. 230, 885 N.W.2d 330 (2016).

The three types of final orders that an appellate court may review are (1) an order that affects a substantial right and that determines the action and prevents a judgment, (2) an order that affects a substantial right made during a special proceeding, and (3) an order that affects a substantial right made on summary application in an action after a judgment is rendered. In re *Guardianship of Aimee S.*, 24 Neb. App. 230, 885 N.W.2d 330 (2016).

ANNOTATIONS

25-1912.

To trigger the savings clause for premature notices of appeal, an announcement must pertain to a decision or order that, once entered, would be final and appealable. *Lindsay Internat. Sales & Serv. v. Wegener*, 297 Neb. 788, 901 N.W.2d 278 (2017).

A motion for new trial, under section 25-1142, is not a proper motion to terminate the running of time to file a notice of appeal when the court grants a motion for summary judgement. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

"[A]nnounces" in subsection (3) of this section requires some type of public or official notification by the court and includes a judge's proclamation from the bench, trial docket notes, file-stamped but unsigned journal entries, and signed journal entries which are not file stamped. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether a postjudgment motion was effective to terminate the running of time to file a notice of appeal, an appellate court reviews the motion based on the relief it seeks, rather than its title. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

To determine whether the savings clause in subsection (3) of this section applies to a notice of appeal filed before the entry of judgment on a postjudgment motion, the court must determine if the postjudgment motion was timely and effective and then determine if the notice was filed after the court announced its decision on the postjudgment motion. *Clarke v. First Nat. Bank of Omaha*, 296 Neb. 632, 895 N.W.2d 284 (2017).

The proper procedure to be followed when taking an appeal from a final order of the district court under section 71-1214 is the general appeal procedure set forth in this section. *In re Interest of L.T.*, 295 Neb. 105, 886 N.W.2d 525 (2016).

25-1912.01.

Where a party has not made a motion for new trial in the trial court, but argues on appeal that there was insufficient evidence to support the amount of damages awarded at trial, an appellate court will review only the sufficiency of the evidence to support the jury's verdict. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

25-2001.

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. *In re Interest of Luz P. et al.*, 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under this section. *In re Interest of Luz P. et al.*, 295 Neb. 814, 891 N.W.2d 651 (2017).

The purpose of an order nunc pro tunc is to correct clerical or formal errors in order to make the record correctly reflect the judgment actually rendered by the court. A nunc pro tunc order reflects now what was actually done before, but was not accurately recorded. The power to issue nunc pro tunc orders is not only conveyed by statute, but is inherent in the power of the courts. *In re Interest of Luz P. et al.*, 295 Neb. 814, 891 N.W.2d 651 (2017).

The district court did not abuse its discretion in overruling a motion to reopen the case where "new evidence" was not material to the proponent's case and could have been discovered through due diligence. *Frederick v. City of Falls City*, 295 Neb. 795, 890 N.W.2d 498 (2017).

25-2163.

The issuance of a peremptory writ of mandamus under this section because of a respondent's failure to answer the alternative writ is the equivalent of a default judgment. *State ex rel. Unger v. State*, 293 Neb. 549, 878 N.W.2d 540 (2016).

ANNOTATIONS

25-2179.

In enacting section 25-1315, the Legislature did not amend the partition statutes or attempt to change the effect of our prior jurisprudence. Both before and after the adoption of section 25-1315, this section characterized the settlement of all ownership rights as a "judgment" and our case law characterizes the order as a final order. *Guardian Tax Partners v. Skrupa Invest. Co.*, 295 Neb. 639, 889 N.W.2d 825 (2017).

The language in *Peterson v. Damoude*, 95 Neb. 469, 145 N.W. 847 (1914), concerning the appealability of orders in a partition action, harmonizes the final order language of section 25-1902 with the partition procedure mandated by this section. *Guardian Tax Partners v. Skrupa Invest. Co.*, 295 Neb. 639, 889 N.W.2d 825 (2017).

25-21,149.

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re *Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,150.

District courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, district courts have jurisdiction over a related declaratory judgment action challenging the constitutionality of Nebraska adoption statutes. In re *Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

25-21,185.10.

Joint tort-feasors who are defendants in an action involving more than one defendant share joint and several liability to the claimant for economic damages. *Ammon v. Nagengast*, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

The proper timeframe to consider whether there are multiple defendants is when the case is submitted to the finder of fact. *Ammon v. Nagengast*, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-21,185.11.

A claimant cannot recover from a nonsettling joint tort-feasor more than that tort-feasor's proportionate share in order to compensate for the fact that the claimant made a settlement with another that may prove to be inadequate. *Ammon v. Nagengast*, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

When the claimant settles with a joint tort-feasor, the claimant forfeits joint and several liability. *Ammon v. Nagengast*, 24 Neb. App. 632, 895 N.W.2d 729 (2017).

25-2301.02.

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of this section applies only to denials made pursuant to the two bases for denial set forth in that subsection. *Robinson v. Houston*, 298 Neb. 746, 905 N.W.2d 636 (2018).

A petitioner for habeas corpus relief whose initial motion to proceed in forma pauperis was denied and who takes a timely interlocutory appeal from that denial, accompanied by a motion to proceed in forma pauperis on appeal, is not required to file a second appeal where the district court erroneously denies the second in forma pauperis motion in order to obtain appellate review of the initial denial. *Campbell v. Hansen*, 298 Neb. 669, 905 N.W.2d 519 (2018).

When an in forma pauperis application is denied and the applicant seeks leave to proceed in forma pauperis in order to obtain appellate review of that denial, the trial court does not have authority to issue an order that would interfere with such appellate review. *Campbell v. Hansen*, 298 Neb. 669, 905 N.W.2d 519 (2018).

A trial court does not have authority to deny an in forma pauperis application once an in forma pauperis application is denied and the applicant wishes to seek interlocutory appellate review of the denial. *Mumin v. Frakes*, 298 Neb. 381, 904 N.W.2d 667 (2017).

A trial court has the authority to deny an in forma pauperis application requested to commence, prosecute, defend, or appeal a case if the court finds the applicant has sufficient funds or the legal positions being asserted therein are frivolous or malicious. *Mumin v. Frakes*, 298 Neb. 381, 904 N.W.2d 667 (2017).

ANNOTATIONS

25-2401.

A defendant does not waive his due process rights by failing to request an interpreter. But the absence of such request by a defendant or defense counsel is a fact relevant to whether the court should have recognized on its own that the defendant needed interpretative services. *State v. Bol*, 294 Neb. 248, 882 N.W.2d 674 (2016).

Even though a defendant might not speak grammatically correct English, where the record satisfactorily demonstrates that such defendant had a sufficient command of the English language to understand questions posed and answers given, a court does not abuse its discretion in refusing to appoint an interpreter. *State v. Bol*, 294 Neb. 248, 882 N.W.2d 674 (2016).

Generally, a defendant in a criminal proceeding may be entitled to have an interpreter provided only where he or she timely requests one, or it is otherwise brought to the trial court's attention that the defendant or a witness has a language difficulty that may prevent meaningful understanding of, or communication in, the proceeding. *State v. Bol*, 294 Neb. 248, 882 N.W.2d 674 (2016).

The appointment of an interpreter for an accused at trial is a matter resting largely in the discretion of the trial court. *State v. Bol*, 294 Neb. 248, 882 N.W.2d 674 (2016).

25-2602.01.

A delegation of arbitrability of future policyholder claims in an agreement concerning or relating to an insurance policy is invalid under subdivision (f)(4) of this section. *Citizens of Humanity v. Applied Underwriters*, 299 Neb. 545, 909 N.W.2d 614 (2018).

25-2603.

This section does not defeat the Federal Arbitration Act's objective, expressed in 9 U.S.C. 4 (2012), that if the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereon. *Cullinane v. Beverly Enters.* - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

Under subsection (a) of this section, on application of a party showing a valid arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order for the moving party; otherwise, the application shall be denied. *Cullinane v. Beverly Enters.* - Neb., 300 Neb. 210, 912 N.W.2d 774 (2018).

25-2620.

This section authorizes appellate jurisdiction to review certain arbitration-related orders, such as an order denying an application to compel arbitration or an order granting an application to stay arbitration. But this section does not address whether a party may appeal an order granting an application to compel arbitration or to stay judicial proceedings. Appellate jurisdiction to review an order compelling arbitration and staying the action is determined by looking to the general final order statute, section 25-1902. *Boyd v. Cook*, 298 Neb. 819, 906 N.W.2d 31 (2018).

25-2720.01.

County courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. *In re Interest of Luz P. et al.*, 295 Neb. 814, 891 N.W.2d 651 (2017).

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. *In re Interest of Luz P. et al.*, 295 Neb. 814, 891 N.W.2d 651 (2017).

25-2728.

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

ANNOTATIONS

25-3401.

The right to interlocutory appeal of the denial of in forma pauperis status in subsection (1) of section 25-2301.02 applies only to denials made pursuant to the two bases for denial set forth in that subsection, and not to denials based on the "three strikes" provision in this section. *Robinson v. Houston*, 298 Neb. 746, 905 N.W.2d 636 (2018).

The definition of "civil action" in this section expressly excludes petitions for habeas corpus relief from consideration in determining whether a prisoner has filed three or more civil actions that have been found to be frivolous. *Gray v. Nebraska Dept. of Corr. Servs.*, 24 Neb. App. 713, 898 N.W.2d 380 (2017).

The standard of review for denial of in forma pauperis under this section is de novo on the record. *Gray v. Nebraska Dept. of Corr. Servs.*, 24 Neb. App. 713, 898 N.W.2d 380 (2017).

27-105.

Because evidence of other acts submitted for a proper purpose may at the same time lead the jury to infer bad character and employ propensity reasoning, the trial court must, if requested by the defendant, instruct the jury to focus only on the proper purpose of the evidence. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

27-106.

Under the "rule of completeness" in this section, a party is entitled to admit the entirety of an act, declaration, conversation, or writing when the other party admits a part and when the entirety is necessary to make it fully understood. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-201.

In determining whether to adjudicate children as to their father, the juvenile court could not take judicial notice of the mother's admission that domestic violence occurred between her and the father in the home, because the admission consisted of adjudicative facts which the father disputed and such facts were not subject to any test by the father at the time of the mother's admission. *In re Interest of Lilly S. & Vincent S.*, 298 Neb. 306, 903 N.W.2d 651 (2017).

While a court may judicially notice its own records under this section, testimony must be transcribed, properly certified, and marked and documents must be marked and identified and each made part of the record so that an appellate court may review the admissibility of each noticed item. *In re Estate of Radford*, 297 Neb. 748, 901 N.W.2d 261 (2017).

27-401.

Relevance is a relational concept and carries meaning only in context. Evidence may be irrelevant if it is directed at a fact not properly an issue under the substantive law of the case or if the evidence fails to alter the probabilities of the existence or nonexistence of a fact in issue. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

To determine whether a statement by a law enforcement official in a recorded interview is relevant for the purpose of providing context to a defendant's statement, a court first considers whether the defendant's statement itself is relevant, whether it makes a material fact more or less probable. If the defendant's statement is itself relevant, then a court must consider whether the law enforcement statement is relevant to provide context to the defendant's statement. To do this, a court considers whether the defendant's statement would be any less probative in the absence of the law enforcement statement. If the law enforcement statement does not make the defendant's statement any more probative, it is not relevant. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

To be admitted at trial, evidence must be relevant, meaning evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. *Hillyer v. Midwest Gastrointestinal Assocs.*, 24 Neb. App. 75, 883 N.W.2d 404 (2016).

ANNOTATIONS

27-402.

Evidence of risk-of-procedure or risk-of-surgery discussions with the patient is generally irrelevant and unfairly prejudicial where the plaintiff alleges only negligence, and not lack of informed consent. *Hillyer v. Midwest Gastrointestinal Assocs.*, 24 Neb. App. 75, 883 N.W.2d 404 (2016).

27-403.

The defendant's statements about family abuse do not bear a significant risk of unfair prejudice. *State v. Hernandez*, 299 Neb. 896, 911 N.W.2d 524 (2018).

The defendant's statements in which he referenced "gang-banging" in his past and not believing in God carried a risk of unfair prejudice, but the risk was not significant given the isolated and brief nature of the statements in the context of the 2-hour interview. *State v. Hernandez*, 299 Neb. 896, 911 N.W.2d 524 (2018).

Under this section and sections 27-701 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, even evidence that is relevant is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Only rarely, and in extraordinarily compelling circumstances, will an appellate court, from the vista of a cold appellate record, reverse a trial court's on-the-spot judgment concerning the relative weighing of probative value and unfair effect to determine whether relevant evidence should be excluded. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

27-404.

Subsection (2) of this section does not apply to evidence of a defendant's other crimes or bad acts if the evidence is inextricably intertwined with the charged crime. Inextricably intertwined evidence includes evidence that forms part of the factual setting of the crime, or evidence that is so blended or connected to the charged crime that proof of the charged crime will necessarily require proof of the other crimes or bad acts, or if the other crimes or bad acts are necessary for the prosecution to present a coherent picture of the charged crime. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

Upon objection to evidence offered under subsection (2) of this section, the proponent must state on the record the specific purpose or purposes for which the evidence is being offered, and the trial court must similarly state the purpose or purposes for which it is receiving the evidence. A trial court must then consider whether the evidence is independently relevant, which means that its relevance does not depend upon its tendency to show propensity. Additionally, evidence offered under subsection (2) of this section is subject to the overriding protection of section 27-403, which requires a trial court to consider whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Finally, when requested, the trial court must instruct the jury on the specific purpose or purposes for which it is admitting the extrinsic acts evidence under subsection (2) of this section, to focus the jurors' attention on that purpose and ensure that it does not consider it for an improper purpose. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

Evidence of a defendant's threat against an individual that he shot 2 days later was inextricably intertwined with the shooting. *State v. Parnell*, 294 Neb. 551, 883 N.W.2d 652 (2016).

The State cannot introduce other acts that are relevant only through the inference that the defendant is by propensity a probable perpetrator of the crime. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

This section codifies the common-law tradition prohibiting resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

Under subsection (1) of this section, proof of a person's character is barred only when in turn, character is used in order to show action in conformity therewith. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

While this section may prevent the admission of other acts evidence for propensity purposes as a protection of the presumption of innocence, it does not follow that the State violates due process by adducing testimony that could

ANNOTATIONS

result in the revelation of other acts if the defense chooses to pursue certain lines of questioning on cross-examination. *State v. Oldson*, 293 Neb. 718, 884 N.W.2d 10 (2016).

27-412.

A false accusation of rape where no sexual activity is involved is itself not "sexual behavior" involving the victim, and such statements fall outside of the rape shield law. *State v. Swindle*, 300 Neb. 734, 915 N.W.2d 795 (2018).

Before defense counsel launches into cross-examination about false allegations of sexual assault, a defendant must establish, outside of the presence of the jury, by a greater weight of the evidence, that (1) the accusation or accusations were in fact made, (2) the accusation or accusations were in fact false, and (3) the evidence is more probative than prejudicial. *State v. Swindle*, 300 Neb. 734, 915 N.W.2d 795 (2018).

In limited circumstances, a defendant's right to confrontation can require the admission of evidence that would be inadmissible under the rape shield statute. *State v. Swindle*, 300 Neb. 734, 915 N.W.2d 795 (2018).

Subject to several exceptions, subsection (1) of this section bars evidence offered to prove that any victim engaged in other sexual behavior and evidence offered to prove any victim's sexual predisposition in civil or criminal proceedings involving alleged sexual misconduct. *State v. Swindle*, 300 Neb. 734, 915 N.W.2d 795 (2018).

Pursuant to subdivision (2)(a) of this section, a court does not err in excluding evidence about a victim's sexual history prior to an assault when the State does not open the door to such evidence, when the evidence does not directly relate to the issue of consent, and when the evidence would not give the jury a significantly different impression of the victim's credibility. *State v. McSwine*, 24 Neb. App. 453, 890 N.W.2d 518 (2017).

27-510.

A ruling made under the initial step of subdivision (3)(b) of this section, regarding whether an informer may be able to give testimony necessary to a fair determination, requires a court to use its judgment and thus exercise its discretion. An appellate court therefore reviews such a ruling for an abuse of discretion. *State v. Blair*, 300 Neb. 372, 914 N.W.2d 428 (2018).

The decision whether to reveal the identity of a confidential informant is controlled by this section, and judicial discretion is involved only to the extent this section makes discretion a factor in determining that question. Where this section commits a question at issue to the discretion of the trial court, an appellate court reviews the trial court's determination for an abuse of discretion. *State v. Blair*, 300 Neb. 372, 914 N.W.2d 428 (2018).

27-602.

Under this section and sections 27-701 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, lay witnesses may testify only as to factual matters based upon their personal knowledge. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

A party's "assumption" of a fact confesses the absence of personal knowledge of the fact. *Sulu v. Magana*, 293 Neb. 148, 879 N.W.2d 674 (2016).

27-605.

Comments by the judge presiding over a matter are clearly not evidence, because a judge may not assume the role of a witness. *In re Interest of J.K.*, 300 Neb. 510, 915 N.W.2d 91 (2018).

27-606.

Juror affidavits cannot be used for the purpose of showing a juror was confused. *Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist.*, 298 Neb. 777, 906 N.W.2d 1 (2018).

27-608.

Subsection (2) of this section does not affect the admissibility of evidence that has become relevant and admissible under the specific contradiction doctrine. *State v. Carpenter*, 293 Neb. 860, 880 N.W.2d 630 (2016).

ANNOTATIONS

27-701.

A defendant doctor's testimony was not hearsay, because it was limited only to his perception of another treating doctor's opinion, rather than providing the actual content of the other treating doctor's out-of-court statement. The defendant doctor had firsthand knowledge of the other treating doctor's statement, his belief as to the opinion was an inference that was rationally based on the context, and the testimony was helpful to an ultimate issue. *Rodriguez v. Surgical Assocs.*, 298 Neb. 573, 905 N.W.2d 247 (2018).

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under this section and section 27-702. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under this section and section 27-702, opinions must be helpful to the trier of fact. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and section 27-702, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-702, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-702, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-702.

Because the credibility of witnesses is a determination within the province of the trier of fact, testimony that usurps that role is not helpful and thus is improper opinion testimony under section 27-701 and this section. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

The abolition of the "ultimate issue rule" does not lower the bar so as to admit all opinions, because under section 27-701 and this section, opinions must be helpful to the trier of fact. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under section 27-701 and this section, opinion testimony, whether by a lay or expert witness, is permissible only if it is helpful to the trier of fact in making a determination of a fact in issue. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-403 and 27-701, a witness may not give an opinion as to a defendant's guilt or how the case should be decided, but, rather, must leave the conclusions to be drawn by the trier of fact, because such opinions are not helpful. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section and sections 27-602 and 27-701, it is improper for a witness to testify whether another person may or may not have been telling the truth in a specific instance. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

27-703.

The defendant doctor could testify to the opinion of another treating doctor to demonstrate the basis for his own opinion. *Rodriguez v. Surgical Assocs.*, 298 Neb. 573, 905 N.W.2d 247 (2018).

27-704.

The "ultimate issue rule," which prohibited witnesses from giving opinions or conclusions on an ultimate fact in issue because such testimony, it was believed, usurps the function or invades the province of the jury, was abolished in Nebraska by this section. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

Under this section, the basic approach to opinions, lay and expert, is to admit them when helpful to the trier of fact. *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017).

ANNOTATIONS

27-801.

A declarant's out-of-court statement offered for the truth of the matter asserted is inadmissible unless it falls within a definitional exclusion or statutory exception. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

Excited utterances are an exception to the hearsay rule, because the spontaneity of excited utterances reduces the risk of inaccuracies inasmuch as the statements are not the result of a declarant's conscious effort to make them. The justification for the excited utterance exception is that circumstances may produce a condition of excitement which temporarily stills the capacity for reflection and produces utterances free of conscious fabrication. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

For a statement to be an excited utterance, the following criteria must be met: (1) There must be a startling event, (2) the statement must relate to the event, and (3) the declarant must have made the statement while under the stress of the event. An excited utterance does not have to be contemporaneous with the exciting event. An excited utterance may be subsequent to the startling event if there was not time for the exciting influence to lose its sway. The true test for an excited utterance is not when the exclamation was made, but whether, under all the circumstances, the declarant was still speaking under the stress of nervous excitement and shock caused by the event. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

The period in which the excited utterance exception applies depends on the facts of the case. Relevant facts include the declarant's physical conditions or manifestation of stress and whether the declarant spoke in response to questioning. But a declarant's response to questioning, other than questioning from a law enforcement officer, may still be an excited utterance if the context shows that the declarant made the statement without conscious reflection. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

"Owe notes" offered to show that the owner of the writings possessed illegal substances for purposes of sale and distribution were not hearsay, because they were not offered to show that a recorded drug sale actually took place. *State v. Schwaderer*, 296 Neb. 932, 898 N.W.2d 318 (2017).

A conspirator recounting past transactions or events having no connection with what is being done in promotion of the common design cannot be assumed to represent those conspirators associated with him or her. *State v. Britt*, 293 Neb. 381, 881 N.W.2d 818 (2016).

Pursuant to subdivision (4) of this section, the necessary commonality of interests between conspirators is no longer present when the central purpose of the conspiracy has succeeded or failed. *State v. Britt*, 293 Neb. 381, 881 N.W.2d 818 (2016).

Text messages attributed to the victim were not hearsay where offered to show their effect on the defendant. *State v. Wynne*, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where there was sufficient evidence to establish that the defendant authored the text messages attributed to him, those text messages, which were his own statements, were not hearsay. *State v. Wynne*, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

27-803.

A sexual assault victim's statements to a sexual assault nurse examiner during an examination performed in an emergency room and to a doctor performing a followup examination that the defendant sexually abused her were admissible under the medical purpose hearsay exception. *State v. Mora*, 298 Neb. 185, 903 N.W.2d 244 (2017).

Statements made by a child victim of sexual assault to a forensic interviewer with a dual medical and investigatory purpose were admissible under subdivision (3) of this section when the forensic interviewer was in the chain of medical care and circumstantial evidence permitted an inference that the statements were made in legitimate and reasonable contemplation of medical diagnosis or treatment. *State v. Jedlicka*, 297 Neb. 276, 900 N.W.2d 454 (2017).

27-804.

Pursuant to subdivision (2)(c) of this section, a trial court cannot rely simply on the State's assurances of unavailability or on the declarant's invocation of the privilege against self-incrimination and the failure to call the declarant to testify as a result. Instead, before a declarant may be excused as unavailable based on a claim of privilege, the declarant must appear at trial, assert the privilege, and have that assertion approved by the trial judge. In addition, the witness must be exempted from testifying by a ruling of the court. *State v. Britt*, 293 Neb. 381, 881 N.W.2d 818 (2016).

ANNOTATIONS

Whether a particular remark within a larger narrative is truly self-inculpatory—such that a reasonable person would make the statement only if believed to be true—is a fact-intensive inquiry requiring careful examination of all the circumstances surrounding the criminal activity involved. When considering statements of a mixed nature, the question is whether the statements have a net exculpatory versus net inculpatory effect. *State v. Britt*, 293 Neb. 381, 881 N.W.2d 818 (2016).

27-901.

The identity of a participant in a telephone conversation may be established by circumstantial evidence, such as the circumstances preceding or following the telephone conversation. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

This section requires authentication or identification of evidence sufficient to support a finding that a matter is what the proponent claims as a condition precedent for admission. But authentication or identification under this section is not a high hurdle. A proponent is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity. If the evidence is sufficient to support a finding that the evidence is what it purports to be, the rule is satisfied. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017).

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 this section. *State v. Wynne*, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

This section does not impose a high hurdle for authentication or identification. *State v. Wynne*, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

Where evidence showed that the defendant used his cell phone during the month of the murder; that in the period prior to the murder, there was contact between the cell phone attributed to the defendant and the telephone numbers of various family members and the defendant's girlfriend; that there was no evidence to suggest that anyone other than the defendant was using the cell phone in question at the time of the murder; that the content of the text messages and sequence of subsequent call contacts between the cell phone attributed to the defendant and the victim's cell phone were consistent with the timeline established for the murder; and that all outgoing contacts by the cell phone attributed to the defendant ceased just shortly before the murder occurred, the trial court did not abuse its discretion in overruling the defendant's objections with respect to his authorship of the text messages attributed to him. *State v. Wynne*, 24 Neb. App. 377, 887 N.W.2d 515 (2016).

27-1002.

By its terms, this section applies to proof of the contents of a recording. *Chevalier v. Metropolitan Util. Dist.*, 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The best evidence rule 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. *Chevalier v. Metropolitan Util. Dist.*, 24 Neb. App. 874, 900 N.W.2d 565 (2017).

The purpose of the best evidence rule is the prevention of fraud, inaccuracy, mistake, or mistransmission of critical facts contained in a writing, recording, or photograph when its contents are an issue in a proceeding. *Chevalier v. Metropolitan Util. Dist.*, 24 Neb. App. 874, 900 N.W.2d 565 (2017).

28-105.

The nonretroactive provision of subsection (7) of this section applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. *State v. Benavides*, 294 Neb. 902, 884 N.W.2d 923 (2016).

28-105.02.

A sentence of 70 years' to life imprisonment was not excessive or a de facto life sentence for an offender who, at age 14, murdered his younger sister. *State v. Thieszen*, 300 Neb. 112, 912 N.W.2d 696 (2018).

A sentence of 110 to 126 years' imprisonment for a murder committed at age 17 was not excessive or a de facto life sentence; the court considered the relevant sentencing factors along with the offender's youth and attendant characteristics and the fact that the offender would be eligible for parole at age 72. *State v. Russell*, 299 Neb. 483, 908 N.W.2d 669 (2018).

ANNOTATIONS

The defendant's resentencing of 60 to 80 years' imprisonment with credit for time served for murder committed as a juvenile offender did not violate *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), where the defendant was not sentenced to life imprisonment without parole and instead had the opportunity for parole in just under 14 years, a full mitigation hearing was held before his sentencing at which both the State and the defendant were given an opportunity to present evidence, and the court stated that it had to consider the fact that a jury convicted the defendant of murder in the first degree but also had to consider the mitigating factors under this section, as well as a psychological evaluation. *State v. Jackson*, 297 Neb. 22, 899 N.W.2d 215 (2017).

28-106.

A determinate sentence, as used in subsection (2) of this section, is imposed when the defendant is sentenced to a single term of years. *State v. Vanness*, 300 Neb. 159, 912 N.W.2d 736 (2018).

28-111.

The phrase "because of" requires the State to prove some causal connection between the victim's association with a person of a certain sexual orientation and the criminal act. *State v. Duncan*, 293 Neb. 359, 878 N.W.2d 363 (2016).

28-116.

The nonretroactive provision of section 28-105(7) applies to the changes made by 2015 Neb. Laws, L.B. 605, to penalties for Class IV felony convictions under section 29-2204.02. *State v. Benavides*, 294 Neb. 902, 884 N.W.2d 923 (2016).

28-201.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

28-205.

There is no requirement that the underlying felony referred to in this section be committed in Nebraska. *State v. Schiesser*, 24 Neb. App. 407, 888 N.W.2d 736 (2016).

28-303.

A question of premeditation is for the jury to decide. *State v. Cotton*, 299 Neb. 650, 910 N.W.2d 102 (2018).

Under subdivision (1) of this section, the three elements which the State must prove beyond a reasonable doubt to obtain a conviction for first degree murder are as follows: The defendant (1) killed another person, (2) did so purposely, and (3) did so with deliberate and premeditated malice. *State v. Cotton*, 299 Neb. 650, 910 N.W.2d 102 (2018).

28-305.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

28-308.

First degree assault and attempted voluntary manslaughter are two distinct offenses. First degree assault requires serious bodily injury to occur, and attempted voluntary manslaughter does not require any injury to occur. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

28-313.

The victim's ability to effectuate an escape despite being bound and gagged does not equate with a voluntary release under subsection (3) of this section. *State v. Betancourt-Garcia*, 295 Neb. 170, 887 N.W.2d 296 (2016).

ANNOTATIONS

28-319.

The victim's lack of consent is not an element of the crime of sexual assault when the victim is incapable of resisting or appraising the nature of his or her conduct. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

To prove a lack-of-capacity sexual assault on the basis of a mental impairment, the State must prove beyond a reasonable doubt that the victim's impairment was so severe that he or she was mentally incapable of resisting or mentally incapable of appraising the nature of the sexual conduct with the alleged perpetrator. In re Interest of K.M., 299 Neb. 636, 910 N.W.2d 82 (2018).

28-322.04.

Under this section, the word "subject" means to cause to undergo the action of something specified. State v. Wood, 296 Neb. 738, 895 N.W.2d 701 (2017).

28-518.

Where a jury found that the defendant unlawfully took multiple items, the jury's finding that the defendant did not take the items "pursuant to one scheme or course of conduct" did not require that the defendant be found not guilty. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

Whether the theft of multiple items was "taken pursuant to one scheme or course of conduct" is not an essential element of a theft offense; instead, whether the items were "taken pursuant to one scheme or course of conduct" is relevant to the determination of whether the value of the items taken could be aggregated for purposes of grading the offense. State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016).

The defendant's prior two convictions for theft by shoplifting could be used to enhance his third conviction for theft by shoplifting, although the prior two convictions occurred before subsection (4) of this section was amended by 2015 Neb. Laws, L.B. 605, to increase the maximum value of the thing involved, since the defendant's third conviction would have been classified under subsection (4) under either the old or the new version of this subsection. State v. Sack, 24 Neb. App. 721, 897 N.W.2d 317 (2017).

28-707.

Criminal endangerment in subsection (1)(a) of this section encompasses not only conduct directed at the child but also conduct which presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. State v. Mendez-Osorio, 297 Neb. 520, 900 N.W.2d 776 (2017).

The State is not required to prove a minor child was in the exclusive care or custody of the defendant when the child abuse occurred. State v. Olbricht, 294 Neb. 974, 885 N.W.2d 699 (2016).

28-831.

A defendant's knowledge of the victim's age is not an essential element of the offense of sex trafficking of a minor. State v. Swindle, 300 Neb. 734, 915 N.W.2d 795 (2018).

28-901.

A police chief's failure to forward, in accordance with section 29-424, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in subsection (1) of this section. The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by section 29-424, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach section 29-424. State v. Wilkinson, 293 Neb. 876, 881 N.W.2d 850 (2016).

28-1201.

Given the amendment to section 28-1202 and the amendment to the term "knife" as defined in subsection (5) of this section, any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. State v. Nguyen, 293 Neb. 493, 881 N.W.2d 566 (2016).

ANNOTATIONS

28-1202.

Given the amendment to this section and the amendment to the term "knife" as defined in section 28-1201(5), any knife with a blade over 3 1/2 inches in length is a deadly weapon per se, and the manner or intended use of such deadly weapon is not an element of the crime charged. *State v. Nguyen*, 293 Neb. 493, 881 N.W.2d 566 (2016).

28-1205.

Malice is not an element of first degree assault, and, as such, "sudden quarrel" would not be applicable to negate it. A similar rationale applies to use of a deadly weapon to commit a felony, which does not have malice as an element. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

28-1322.

A school security officer or campus supervisor may be a victim of disturbing the peace. In re Interest of Elainna R., 298 Neb. 436, 904 N.W.2d 689 (2017).

29-119.

Although the victim's parents, and not the victim's sister, were statutorily-defined "victims" under this section, the court did not abuse its discretion in allowing the sister to read her impact statement at sentencing where the parents were elderly, lived out of state, and did not want to participate in the resentencing. *State v. Thieszen*, 300 Neb. 112, 912 N.W.2d 696 (2018).

29-424.

A police chief's failure to forward, in accordance with this section, to the county attorney a citation charging a city employee with a crime in order to prevent the city employee's employment from being terminated was obstructing government operations as set forth in section 28-901(1). The police chief obstructed or impaired a governmental function by failing to forward the citation to the county attorney, as required by this section, because the action of failing to forward the citation impaired the county attorney's performance of its prosecutorial functions. The police chief did not have discretion to remove the citation of the city employee from the packet of citations to be sent to the county attorney such to conclude that he did not breach this section. *State v. Wilkinson*, 293 Neb. 876, 881 N.W.2d 850 (2016).

29-815.

Where there was no clear showing of prejudice, an officer's failure to return a search warrant within the time limit provided by this section was purely a ministerial defect and did not render the warrant invalid. *State v. Nolt*, 298 Neb. 910, 906 N.W.2d 309 (2018).

29-818.

Postconviction proceedings are the equivalent of a "trial" for purposes of this section. *State v. Buttercase*, 296 Neb. 304, 893 N.W.2d 430 (2017).

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. Dubray*, 24 Neb. App. 67, 883 N.W.2d 399 (2016).

29-822.

Absent an exception, a failure to move for the suppression of evidence seized unlawfully waives the objection. *State v. Cotton*, 299 Neb. 650, 910 N.W.2d 102 (2018).

The intention of this section is that motions to suppress evidence are to be ruled on and finally determined before trial, unless the motion is within the exceptions contained in the statute. *State v. Cotton*, 299 Neb. 650, 910 N.W.2d 102 (2018).

ANNOTATIONS

29-1207.

Although amendments to subdivision (4)(b) of this section providing for waiver of speedy trial rights if delay results from a request for continuance were designed to prevent abuse, it does not follow that the waiver set forth therein applies only if the defendant's continuance was in bad faith; such a case-by-case evaluation of subjective intent would be untenable, and this section does not provide for it. *State v. Bridgeford*, 298 Neb. 156, 903 N.W.2d 22 (2017).

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 subdivisions (4)(a) to (e) of this section, in addition to the findings under subdivision (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. Lintz*, 298 Neb. 103, 902 N.W.2d 683 (2017).

The reason for the defendant's request for a continuance is irrelevant to whether the defendant has waived the statutory right to a speedy trial by requesting a continuance that results in the trial's being rescheduled to a date more than 6 months after the indictment is returned or information filed. *State v. Gill*, 297 Neb. 852, 901 N.W.2d 679 (2017).

This section does not impose a unitary speedy trial clock on all joined codefendants. The period of delay is determined by first calculating the defendant's speedy trial time absent the codefendant exclusion and then determining the number of days beyond that date that the joint trial is set to begin. *State v. Beitel*, 296 Neb. 781, 895 N.W.2d 710 (2017).

A Nebraska prisoner sought relief under two different speedy trial statutes, but only section 29-3805, governing intrastate detainees, applied. *State v. Kolbjornsen*, 295 Neb. 231, 888 N.W.2d 153 (2016).

When the State is statutorily authorized to take an interlocutory appeal from a district court's order granting a defendant's pretrial motion in a criminal case, then such an appeal is an expected and reasonable consequence of the defendant's motion and the time attributable to the appeal, regardless of the course the appeal takes, is properly excluded from speedy trial computation. *State v. Hood*, 294 Neb. 747, 884 N.W.2d 696 (2016).

This section requires discharge of a defendant whose case has not been tried within 6 months after the filing of the information. *State v. Saylor*, 294 Neb. 492, 883 N.W.2d 334 (2016).

29-1208.

If a trial court fails to include the computation as required by *State v. Williams*, 277 Neb. 133, 761 N.W.2d 514 (2009), in its order on a motion for absolute discharge, the appeal will be summarily remanded to the trial court so that it can prepare the required computation. *State v. Lintz*, 298 Neb. 103, 902 N.W.2d 683 (2017).

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. Lintz*, 298 Neb. 103, 902 N.W.2d 683 (2017).

29-1418.

Any error in a ruling on a motion to dismiss under subsection (3) of this section based on the sufficiency of evidence before a grand jury is cured by a subsequent finding at trial of guilt beyond a reasonable doubt which is supported by sufficient evidence. *State v. Chauncey*, 295 Neb. 453, 890 N.W.2d 453 (2017).

29-1808.

Objections to an information or the content of an information should be raised by a motion to quash. *State v. Smith*, 294 Neb. 311, 883 N.W.2d 299 (2016).

ANNOTATIONS

29-1816.

Pursuant to subdivision (3)(a) of this section, after considering the evidence and the criteria set forth in section 43-276, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. *State v. Tyler P.*, 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to subdivision (3)(b) of this section, the court is required to set forth findings for the reason for its decision. *State v. Tyler P.*, 299 Neb. 959, 911 N.W.2d 260 (2018).

29-1817.

A plea in bar may be used to raise a double jeopardy challenge to the State's right to retry a defendant following a mistrial. *State v. Combs*, 297 Neb. 422, 900 N.W.2d 473 (2017).

29-1823.

Lay witness testimony is admissible in a competency hearing under subsection (1) of this section. *State v. Martinez*, 295 Neb. 1, 886 N.W.2d 256 (2016).

29-1912.

Under this section, whether a prosecutor's failure to disclose evidence results in prejudice depends on whether the information sought is material to the preparation of the defense, meaning that there is a strong indication that such information will play an important role in uncovering admissible evidence, aiding preparation of witnesses, corroborating testimony, or assisting impeachment or rebuttal. *State v. Harris*, 296 Neb. 317, 893 N.W.2d 440 (2017).

An expert's oral, unrecorded opinions do not fall within the scope of subdivision (1)(e) of this section. *State v. Parnell*, 294 Neb. 551, 883 N.W.2d 652 (2016).

29-2002.

While subsections (1) and (3) of this section present different questions, it is clear that there is no error under either subsection if joinder was not prejudicial. *State v. Cotton*, 299 Neb. 650, 910 N.W.2d 102 (2018).

29-2004.

In a trial for first degree sexual assault, the trial court had discretion to discharge a juror following the close of evidence given the following facts: (1) the juror, on the first day of trial after the jury was sworn, alerted the court of his reluctance to serve on the jury given his upbringing and criminal history; (2) the court had questioned the juror and determined that the juror could remain impartial; (3) the court, after giving its instructions, sua sponte, raised concerns about the juror's lack of attentiveness during trial; and (4) the juror's criminal record, which the State proffered in support of its motion for discharge, indicated that the juror had misrepresented his criminal history in the juror qualification form. *State v. Huff*, 298 Neb. 522, 905 N.W.2d 59 (2017).

On the State's motion at the close of evidence to strike a seated juror for cause, in a prosecution for first degree sexual assault, the State had the burden to show that the challenged juror was biased, was engaged in misconduct, or was otherwise unable to continue to serve. *State v. Huff*, 298 Neb. 522, 905 N.W.2d 59 (2017).

This section, governing the discharge of a juror after the jury is sworn, and not section 29-2006, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. *State v. Huff*, 298 Neb. 522, 905 N.W.2d 59 (2017).

When a defendant, through diligence, is able to discover a reason to challenge a juror, the objection to the juror must be made at the time of voir dire. *State v. Huff*, 298 Neb. 522, 905 N.W.2d 59 (2017).

29-2006.

Section 29-2004, governing the discharge of a juror after the jury is sworn, and not this section, which governs the disqualification of a juror for cause before the jury is sworn, governed the State's motion to "strike" the juror for cause after trial began. *State v. Huff*, 298 Neb. 522, 905 N.W.2d 59 (2017).

ANNOTATIONS

29-2102.

A de novo standard of review applies when an appellate court is reviewing a trial court's dismissal of a motion for new trial under this section without conducting an evidentiary hearing. *State v. Cross*, 297 Neb. 154, 900 N.W.2d 1 (2017).

29-2103.

A former version of subsection (4) of this section, which required a defendant to move for a new trial because of newly discovered evidence within 3 years, did not violate the due process rights of a defendant who alleged the State failed to disclose favorable evidence it had received 5 years after his murder conviction. The defendant did not claim that the favorable evidence was sufficiently compelling to show his actual innocence or that Nebraska's postconviction procedures were inadequate to protect his statutory postconviction rights, and a defendant has no substantive due process right to have the State disclose exculpatory evidence discovered after a final judgment. *State v. Harris*, 296 Neb. 317, 893 N.W.2d 440 (2017).

29-2204.

This section and section 29-2204.02(4) do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. *State v. Artis*, 296 Neb. 172, 893 N.W.2d 421 (2017).

29-2204.02.

A determinate sentence, as used in subdivision (1)(a) of this section, is imposed when the defendant is sentenced to a single term of years. *State v. Vanness*, 300 Neb. 159, 912 N.W.2d 736 (2018).

A transfer from juvenile court to criminal court does not eliminate the possibility of disposition under the juvenile code. *In re Interest of Steven S.*, 299 Neb. 447, 908 N.W.2d 391 (2018).

The trial court did not plainly err by failing to impose an indeterminate sentence where an information alleged that a Class IIIA felony occurred over a period of time both before and after August 30, 2015; the evidence about when the assaults occurred could cover dates before and after August 30; and the jury did not make a specific finding demonstrating that it found the offense was committed after August 30. *State v. Mora*, 298 Neb. 185, 903 N.W.2d 244 (2017).

The defendant's sentence of 2 years' imprisonment with a 12-month period of postrelease supervision for possession of a controlled substance was vacated pursuant to *State v. Randolph*, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck section 29-2260(5) and added subsection (4) of this section, which precluded postrelease supervision. *State v. Chacon*, 296 Neb. 203, 894 N.W.2d 238 (2017).

A determinate sentence is imposed when the defendant is sentenced to a single term of years, such as a sentence of 2 years' imprisonment. In contrast, when imposing an indeterminate sentence, a sentencing court ordinarily articulates either a minimum term and maximum term or a range of time for which a defendant is to be incarcerated. *State v. Artis*, 296 Neb. 172, 893 N.W.2d 421 (2017).

In Nebraska, the fact that the minimum term and maximum term of a sentence are the same does not affect the sentence's status as an indeterminate sentence. *State v. Artis*, 296 Neb. 172, 893 N.W.2d 421 (2017).

Section 29-2204 and subsection (4) of this section do not require a sentence for a Class IV felony to have a minimum term less than the maximum term. *State v. Artis*, 296 Neb. 172, 893 N.W.2d 421 (2017).

A determination of whether there are substantial and compelling reasons under subdivision (2)(c) of this section is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion. *State v. Baxter*, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court may fulfill the requirement of subsection (3) of this section to state its reasoning on the record by a combination of the sentencing hearing and sentencing order. *State v. Baxter*, 295 Neb. 496, 888 N.W.2d 726 (2017).

The court's determination of substantial and compelling reasons under subdivision (2)(c) of this section should be based on a review of the record, including the presentence investigation report and the record of the trial, and its determination must be supported by such record. *State v. Baxter*, 295 Neb. 496, 888 N.W.2d 726 (2017).

ANNOTATIONS

Under the nonretroactive provision of section 28-105(7), the changes made in this section to the penalties for Class IV felony convictions by 2015 Neb. Laws, L.B. 605, do not apply to any offense committed before August 30, 2015. *State v. Benavides*, 294 Neb. 902, 884 N.W.2d 923 (2016).

It is clear that the Legislature did not intend to apply this section retroactively. *State v. Raatz*, 294 Neb. 852, 885 N.W.2d 38 (2016).

29-2221.

By its terms, subsection (1) of this section requires the triggering offense to be "a felony" before the habitual criminal statute will apply to the sentencing of the triggering offense. But in order to be one of the prior convictions that establishes habitual criminal status, this section does not require that the prior conviction was a "felony" per se; instead, it requires that the prior conviction resulted in a sentence of imprisonment for a term "of not less than one year." *State v. Abejide*, 293 Neb. 687, 879 N.W.2d 684 (2016).

29-2260.

The defendant's sentence of 2 years' imprisonment with a 12-month period of postrelease supervision for possession of a controlled substance was vacated pursuant to *State v. Randolph*, 186 Neb. 297, 183 N.W.2d 225 (1971), where the defendant was sentenced concurrently for two Class IV felonies and a Class W misdemeanor and where after sentencing, but while the matter was pending on appeal, 2016 Neb. Laws, L.B. 1094, struck subsection (5) of this section and added section 29-2204.02(4), which precluded postrelease supervision. *State v. Chacon*, 296 Neb. 203, 894 N.W.2d 238 (2017).

29-2262.

Custodial sanctions are distinct from jail time under subdivision (2)(b) of this section. *State v. Kantaras*, 294 Neb. 960, 885 N.W.2d 558 (2016).

Jail time under subdivision (2)(b) of this section is a predetermined, definite term of jail time up to the term authorized by the statute; that term may be served periodically, but it is not conditional. *State v. Kantaras*, 294 Neb. 960, 885 N.W.2d 558 (2016).

The general provisions of subsection (1) and subdivision (2)(r) of this section do not confer the power to impose jail time as part of sentences of probation; jail time as a condition of probation may be granted only under specific statutory authority. *State v. Kantaras*, 294 Neb. 960, 885 N.W.2d 558 (2016).

The amendment by 2015 Neb. Laws, L.B. 605, removing the provision of this section relating to jail time as a condition of probation for felony offenses did not implicitly repeal the provision in section 60-6,197.03(6) that required 60 days in jail as a condition of probation. *State v. Thompson*, 294 Neb. 197, 881 N.W.2d 609 (2016).

29-2262.06.

When a court sentences a defendant to postrelease supervision, it may impose any conditions of postrelease supervision authorized by statute. *State v. Dill*, 300 Neb. 344, 913 N.W.2d 470 (2018).

Stale financial affidavits and earlier orders allowing a defendant to proceed in forma pauperis were insufficient to show the defendant's financial condition at the time he requested that the court waive payment of probation fees. *State v. Jensen*, 299 Neb. 791, 910 N.W.2d 155 (2018).

29-2263.

Once the State invokes the revocation process under section 29-2268 and a court finds a violation of postrelease supervision, the court lacks the power to invoke the early discharge provisions of this section. *State v. Kennedy*, 299 Neb. 362, 908 N.W.2d 69 (2018).

This section authorizes a court to commute the terms of probation, but not the original sentence. *State v. Irish*, 298 Neb. 61, 902 N.W.2d 669 (2017).

Where a court is required to revoke a driver's license as part of a judgment of conviction, it is part of the offender's punishment for the crime, and is not considered a term of probation which can be altered under this section. *State v. Irish*, 298 Neb. 61, 902 N.W.2d 669 (2017).

ANNOTATIONS

29-2268.

Once a district court finds a violation of postrelease supervision, it must proceed under this section. *State v. Kennedy*, 299 Neb. 362, 908 N.W.2d 69 (2018).

Termination of postrelease supervision as being unsatisfactory is not a revocation of postrelease supervision and is not statutorily authorized. *State v. Kennedy*, 299 Neb. 362, 908 N.W.2d 69 (2018).

29-2315.01.

In cases brought as error proceedings under this section, the good faith exception to the exclusionary rule applies to warrantless blood draws conducted prior to the U.S. Supreme Court's decision in *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). *State v. Hatfield*, 300 Neb. 152, 912 N.W.2d 731 (2018).

29-2316.

Where a criminal matter is brought to a higher appellate court by an exception proceeding from the district court sitting as an appellate court, the higher appellate court may reverse the district court's order, because this section does not limit the relief the higher appellate court can order. *State v. Hatfield*, 300 Neb. 152, 912 N.W.2d 731 (2018).

When an exception proceeding is before the Nebraska Supreme Court or Court of Appeals from the district court where the trial took place in district court, this section restricts the scope of any ruling directed at the defendant and district court. But where the district court is sitting as an appellate court, the defendant was not placed in jeopardy in that court and the limitations of this section do not apply to dispositions or orders directed at the district court. *State v. Thalken*, 299 Neb. 857, 911 N.W.2d 562 (2018).

29-2801.

After the court's jurisdiction has been invoked by a petition for habeas corpus seeking the custody of children, the children become wards of the court and their welfare lies in the hands of the court. *Maria T. v. Jeremy S.*, 300 Neb. 563, 915 N.W.2d 441 (2018).

Courts are cautioned in habeas proceedings to follow the traditional procedure illustrated by the habeas corpus statutes rather than make up their own procedure. *Maria T. v. Jeremy S.*, 300 Neb. 563, 915 N.W.2d 441 (2018).

Habeas corpus is not a proper remedy to challenge a petitioner's detention pursuant to a final conviction and sentence on the basis that the statute underlying the conviction is unconstitutional. *Sanders v. Frakes*, 295 Neb. 374, 888 N.W.2d 514 (2016).

The State cannot collaterally attack in a habeas action a prior sentence that the court erroneously failed to enhance under the habitual criminal statutes. *Meyer v. Frakes*, 294 Neb. 668, 884 N.W.2d 131 (2016).

29-2824.

No prepayment of fees is necessary in order to file a petition for a writ of habeas corpus based upon an issue of custody in a criminal case. *Buggs v. Frakes*, 298 Neb. 432, 904 N.W.2d 664 (2017).

29-3001.

A court looks to the allegations of the verified-postconviction motion and the files and records of the case to determine which of the triggering events applies to the determination of timeliness. *State v. Torres*, 300 Neb. 694, 915 N.W.2d 596 (2018).

The "time for filing a direct appeal" of subdivision (4)(a) of this section does not include time for filing a writ of certiorari. If the timeliness of a postconviction motion is challenged, an inmate must raise all applicable arguments in support of timeliness to the district court to preserve them for appellate review. *State v. Conn*, 300 Neb. 391, 914 N.W.2d 440 (2018).

Applying the postconviction time limits to inmates whose crimes occurred prior to the enactment of the time limits does not result in ex post facto punishment. *State v. Amaya*, 298 Neb. 70, 902 N.W.2d 675 (2017).

ANNOTATIONS

If, as part of its preliminary review, a trial court finds a postconviction motion affirmatively shows it is time barred, the court is permitted, but not obligated, to sua sponte consider and rule upon the timeliness of the motion. *State v. Amaya*, 298 Neb. 70, 902 N.W.2d 675 (2017).

Ineffective assistance of postconviction counsel is not an impediment created by state action, because there is no constitutional right to effective assistance of counsel in a postconviction proceeding. *State v. Amaya*, 298 Neb. 70, 902 N.W.2d 675 (2017).

The 1-year statute of limitations for postconviction actions applies to all verified motions for postconviction relief, including successive motions. *State v. Amaya*, 298 Neb. 70, 902 N.W.2d 675 (2017).

After a criminal case is closed, there may be ethical duties that require prosecutors to take action upon learning of evidence that creates a reasonable likelihood the defendant did not commit the crime. But Nebraska's postconviction statutes provide relief only for constitutional violations that render a conviction void or voidable. The prosecution's disclosure duties under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), do not apply after a defendant has been convicted in a fair trial and the presumption of innocence no longer applies. *State v. Harris*, 296 Neb. 317, 893 N.W.2d 440 (2017).

Civil pleading rules do not apply to postconviction proceedings. *State v. Robertson*, 294 Neb. 29, 881 N.W.2d 864 (2016).

A court decision that announced a new rule but did not recognize a new constitutional claim is not a triggering event under subdivision (4)(d) of this section, nor were later cases applying that court decision. *State v. Harrison*, 293 Neb. 1000, 881 N.W.2d 860 (2016).

The 1-year limitation period under subsection (4) of this section shall run from the date on which the constitutional claim asserted was initially recognized, and not from the filing date of the opinion determining that the recognition of the constitutional claim asserted applies retroactively. *State v. Goynes*, 293 Neb. 288, 876 N.W.2d 912 (2016).

29-3004.

Although appointment of counsel in postconviction cases is discretionary, this section provides that once counsel has been appointed and appointed counsel has made application to the court, the court "shall" fix reasonable expenses and fees. *State v. Rice*, 295 Neb. 241, 888 N.W.2d 159 (2016).

Court-appointed counsel in a postconviction proceeding may appeal to the appellate courts from an order determining expenses and fees allowed under this section. Such an appeal is a proceeding separate from the underlying postconviction proceeding. *State v. Rice*, 295 Neb. 241, 888 N.W.2d 159 (2016).

To determine reasonable expenses and fees under this section, a court must consider several factors: 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. *State v. Rice*, 295 Neb. 241, 888 N.W.2d 159 (2016).

29-3523.

A county court lacked jurisdiction over the defendant's motion to seal records in a criminal action filed years after her case had been dismissed. The applicable statute did not authorize filing a motion to make her criminal history record information nonpublic, but, rather, required a person to bring an action for such relief, disapproving *State v. Blair*, 17 Neb. App. 611, 767 N.W.2d 143 (2009). *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

A county court's order overruling the defendant's motion to seal records, filed years after her case had been dismissed, was a final, appealable order, because the order ruled on a postjudgment motion and affected a substantial right. The right invoked was the statutory right to remove the record of the defendant's citation from the public record, no mere technical right. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order on a motion seeking to remove the record of a criminal citation from the public record under this section affects a substantial right for purposes of section 25-1902. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

An order regarding the statutory right to remove criminal record history information from the public record affects a substantial right for purposes of determining whether it is a final, appealable order. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

ANNOTATIONS

Section 29-3528 authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to this section. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section does not authorize the filing of a motion to make criminal history record information nonpublic. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section generally protects certain criminal history record information and prohibits, subject to exceptions, the dissemination of this information. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3528.

This section authorizes an aggrieved individual to bring an action, not to file a motion in the criminal case the record of which he or she seeks to seal pursuant to section 29-3523. An "action" is a distinct and separate court proceeding, governed by separate pleadings and requiring separate process. *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

This section provides a procedure for enforcing the privacy protections of the Security, Privacy, and Dissemination of Criminal History Information Act (including section 29-3523). *State v. Coble*, 299 Neb. 434, 908 N.W.2d 646 (2018).

29-3805.

A Nebraska prisoner sought relief under two different speedy trial statutes, but only this section, governing intrastate detainees, applied. *State v. Kolbjornsen*, 295 Neb. 231, 888 N.W.2d 153 (2016).

Good cause means a substantial reason, one that affords a legal excuse, and it is a factual question dealt with on a case-by-case basis. *State v. Kolbjornsen*, 295 Neb. 231, 888 N.W.2d 153 (2016).

Under some circumstances, courtroom unavailability may constitute good cause to continue a trial. *State v. Kolbjornsen*, 295 Neb. 231, 888 N.W.2d 153 (2016).

29-4003.

A sex offender registrant's actual registration under another jurisdiction's law is conclusive evidence that the registrant was required to register within the meaning of subdivision (1)(a)(iv) of this section. *State v. Clemens*, 300 Neb. 601, 915 N.W.2d 550 (2018).

Under subdivision (1)(a)(iv) of this section, whether one is "required to register as a sex offender" in another jurisdiction is determined under the laws of the other jurisdiction rather than under Nebraska law. Subdivision (1)(a)(iv) of this section adds no additional requirement that registration in the other jurisdiction must be based on a "conviction" or an offense that would have required the person to register in Nebraska if the offense had been committed in Nebraska. *State v. Clemens*, 300 Neb. 601, 915 N.W.2d 550 (2018).

A finding under subdivision (1)(b)(i)(B) of this section must be made during the proceedings on the underlying conviction or plea and is a judgment on the issue of the Sex Offender Registration Act's application to the defendant, which must be appealed at the end of the proceeding. *State v. Ratumaimuri*, 299 Neb. 887, 911 N.W.2d 270 (2018).

29-4116.

The DNA Testing Act does not apply to DNA testing of the defendant's person for the purpose of determining the defendant's metabolism of prescription medication. Furthermore, new evidence concerning a defendant's metabolism of prescription drugs, when such evidence has no bearing on identity, is not exculpatory under the DNA Testing Act. *State v. Robbins*, 297 Neb. 503, 900 N.W.2d 745 (2017).

29-4603.

A defendant alleging a wrongful conviction claim pursuant to this section must plead more than lack of intent to establish "actual innocence of the crime." *Nadeem v. State*, 298 Neb. 329, 904 N.W.2d 244 (2017).

ANNOTATIONS

30-810.

This section confers exclusive jurisdiction to the county court to approve wrongful death settlements and discretionary jurisdiction to distribute the proceeds of wrongful death claims. The beneficiaries of a wrongful death action are not entitled to be parties to the wrongful death proceeds distribution proceedings. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on subrogation. Accordingly, under section 48-118.04, proceedings for the fair and equitable distribution of wrongful death action proceeds subject to subrogation in workers' compensation cases must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section is silent on wrongful death actions. Accordingly, under section 48-118.01, wrongful death actions must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

30-2314.

The signature of a testator's surviving spouse on a deed was evidence of a consent to transfer within the meaning of this section. In re Estate of Alberts, 293 Neb. 1, 875 N.W.2d 427 (2016).

30-2315.

Under the plain language of this section, the surrounding facts and circumstances should be taken in consideration by the court in order to determine whether to authorize the filing for the elective share in the case of a protected person. In re Guardianship & Conservatorship of Kaiser, 295 Neb. 532, 891 N.W.2d 84 (2017).

30-2316.

A surviving spouse must prove both that the execution of the waiver was not voluntary and that the waiver was unconscionable when executed to prove a waiver he or she signed is unenforceable. In re Estate of Psota, 297 Neb. 570, 900 N.W.2d 790 (2017).

Subsection (d) of this section contemplates the waiving of the spouse's rights of inheritance only. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

This section's authorization of postnuptial estate agreements should be strictly construed, because all postnuptial agreements were void at common law. Devney v. Devney, 295 Neb. 15, 886 N.W.2d 61 (2016).

30-2327.

A document purporting to be a will, which is otherwise sufficient, will satisfy the "writing" requirement of this section, whether it is completely handwritten; partly written in ink and partly in pencil; partly typewritten and partly printed; partly printed, partly typewritten, and partly written; or on a printed form, as well as other combinations of these forms and comparable permanent techniques of writing which substantively evidence testamentary intent. In re Estate of Pluhacek, 296 Neb. 528, 894 N.W.2d 325 (2017).

30-2408.

The exception to the 3-year statute of limitations in subsection (4) of this section is not applicable when any prior formal or informal proceeding for probate, whether completed or not, has occurred. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

The statute of limitations in this section is self-executing and ordinarily begins to run upon the decedent's death. In re Estate of Fuchs, 297 Neb. 667, 900 N.W.2d 896 (2017).

30-2425.

Without additional facts indicating otherwise, an order appointing a special administrator pursuant to this section is not a final order. In re Estate of Abbott-Ochsner, 299 Neb. 596, 910 N.W.2d 504 (2018).

30-2485.

A court cannot extend the time for filing a claim that arose after death. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

ANNOTATIONS

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of this section. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

30-2486.

Although identifying the amount of a claim is not statutorily required, doing so advances the purpose of section 30-2485. In re Estate of Karmazin, 299 Neb. 315, 908 N.W.2d 381 (2018).

30-3803.

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-3825.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to this section and section 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3826.

Under section 30-3837(b), the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to section 30-3825 and this section. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3837.

Under subsection (b) of this section, the party seeking a modification of a trust must affirmatively demonstrate that all beneficiaries have consented to the modification. The issue of consent for unknown beneficiaries must be resolved pursuant to sections 30-3825 and 30-3826. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

Under subsection (e) of this section, there must be a showing that the interests of nonconsenting beneficiaries will be adequately protected by a modification. For the interests of nonconsenting beneficiaries to be adequately protected, the court must determine that modification will not affect those interests and impose safeguards to prevent them from being affected, when deemed necessary. In re Trust of Shire, 299 Neb. 25, 907 N.W.2d 263 (2018).

30-3855.

This section does not dictate who may petition for the removal of a trustee, but, rather, describes to whom fiduciary duties are owed. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided for the discretionary payment of trust principal to beneficiaries for their health, maintenance, support, and education, the beneficiaries had enforceable, present interests in the trust and the trustee owed fiduciary duties to the beneficiaries. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where a trust agreement provided limited testamentary power to appoint trust property to or for the benefit of joint descendants, the power of appointment was neither a general power of appointment nor a power of withdrawal. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Pursuant to this section, the rights of the beneficiaries of a revocable trust are subject to the continued control of the settlor. In re Trust Created by Haberman, 24 Neb. App. 359, 886 N.W.2d 829 (2016).

30-3859.

A trustee is liable for the action of another trustee if he joins in the action, fails to prevent the cotrustee from committing a serious breach of trust, or fails to compel the cotrustee to redress a serious breach of trust. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

Where one cotrustee also acts as a power of attorney for a second cotrustee in managing trust affairs, that cotrustee is considered to join in all actions of the second cotrustee and may owe certain fiduciary duties as a result. In re Conservatorship of Abbott, 295 Neb. 510, 890 N.W.2d 469 (2017).

ANNOTATIONS

30-3862.

Where two trusts share the same beneficiaries, trustee, and trust instrument and removal of the trustee for breach of fiduciary duty was appropriate for one of the trusts, a county court has the power in equity to determine if it is in the best interests of the beneficiaries to remove the trustee of the second trust. *In re Conservatorship of Abbott*, 295 Neb. 510, 890 N.W.2d 469 (2017).

30-38,101.

The trial court did not err in dismissing claims for a constructive trust against a purchaser, because the purchaser dealt in good faith with the trustees and had no reason to believe they participated in a breach of trust. *Junker v. Carlson*, 300 Neb. 423, 915 N.W.2d 542 (2018).

30-4024.

Under subsection (2) of this section, for an agent who is not the ancestor, spouse, or issue of the principal to use the power of attorney to create in himself or herself an interest in the principal's property, the agent must have express authority from the principal in the power of attorney. *Cisneros v. Graham*, 294 Neb. 83, 881 N.W.2d 878 (2016).

32-612.

A person who has no "political party affiliation" cannot change his or her "political party affiliation." *Davis v. Gale*, 299 Neb. 377, 908 N.W.2d 618 (2018).

The phrase "political party affiliation" is a term of art specifically referencing an existing relationship with one of Nebraska's established political parties. Nonpartisan has no relationship with any of Nebraska's established political parties and thus has no "political party affiliation" as that phrase is used in the Election Act. *Davis v. Gale*, 299 Neb. 377, 908 N.W.2d 618 (2018).

32-1405.

"[S]ponsoring the petition" in the context of subsection (1) of this section means assuming responsibility for the initiative or referendum petition process. *Hargesheimer v. Gale*, 294 Neb. 123, 881 N.W.2d 589 (2016).

36-103.

An exception is outside of this section, but a reservation must comply with this section. *Walters v. Sporer*, 298 Neb. 536, 905 N.W.2d 70 (2017).

The acceptance of a deed operates to satisfy the requirement that a contract creating an interest in land must be signed by the party to be charged therewith. *Walters v. Sporer*, 298 Neb. 536, 905 N.W.2d 70 (2017).

37-522.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to this section to justify the denial of a concealed handgun permit application under section 69-2433(8). *Shurigar v. Nebraska State Patrol*, 293 Neb. 606, 879 N.W.2d 25 (2016).

38-2137.

A mental health practitioner is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. *Holloway v. State*, 293 Neb. 12, 875 N.W.2d 435 (2016).

38-3132.

A psychologist is not liable for failing to warn of a patient's threatened violent behavior where the patient communicated a serious threat of physical violence to persons at random in a city with 300,000 or more inhabitants. *Holloway v. State*, 293 Neb. 12, 875 N.W.2d 435 (2016).

ANNOTATIONS

40-104.

Issue preclusion and judicial estoppel may supply the statutory requirements set forth in this section for encumbrances of a homestead. *Jordan v. LSF8 Master Participation Trust*, 300 Neb. 523, 915 N.W.2d 399 (2018).

A valid acknowledgment of both spouses must appear on the face of an instrument purporting to convey or encumber the homestead of a married person or the instrument is void. *Mutual of Omaha Bank v. Watson*, 297 Neb. 479, 900 N.W.2d 545 (2017).

An acknowledgment is essential when conveying a homestead. An instrument purporting to convey or encumber the homestead of a married person is void if it is not executed and acknowledged by both the husband and the wife. *Mutual of Omaha Bank v. Watson*, 297 Neb. 479, 900 N.W.2d 545 (2017).

In cases where a contract of sale, deed of conveyance, or encumbrance of a homestead was found void for failing to comply with execution requirements, the homestead right already existed. But when a purchaser must obtain a purchase-money mortgage to acquire real property, the purchaser cannot show a present right of occupancy or possession until after he or she gives the lender the security interest. Accordingly, it is the general rule that restrictions on the encumbrance of a homestead without a spouse's consent or signature do not invalidate a security interest in the property that a purchaser concurrently gives for its purchase price. *Mutual of Omaha Bank v. Watson*, 297 Neb. 479, 900 N.W.2d 545 (2017).

42-351.

The trial court was not divested of jurisdiction to enter an order modifying child custody where orders that were pending on appeal did not address custody. *Burns v. Burns*, 293 Neb. 633, 879 N.W.2d 375 (2016).

42-358.

Subsection (1) of this section permits the district court to order the county to pay attorney fees and expenses only when a responsible party is indigent. *White v. White*, 296 Neb. 772, 896 N.W.2d 600 (2017).

When an indigence hearing takes place after the appointment of a guardian ad litem and the ordering of fees, a trial court's determination of indigence should depend upon a party's finances at the time of the indigence hearing. *White v. White*, 293 Neb. 439, 884 N.W.2d 1 (2016).

42-362.

The trial court did not abuse its discretion in awarding continuing monthly spousal support in favor of the wife until either party died or the wife remarried or was no longer mentally ill, even though the spousal-support obligation might place the husband at or near his net income level; the wife was in an even more difficult financial position given that she had no ability to work. *Onstot v. Onstot*, 298 Neb. 897, 906 N.W.2d 300 (2018).

42-364.

When making a determination of child support under this section, the court must take into account and give effect to an existing order of support under section 43-512.04. The court may order the existing order to remain in effect without modification after considering whether modification is warranted. *Fetherkile v. Fetherkile*, 299 Neb. 76, 907 N.W.2d 275 (2018).

Summons is required to be served on the defendant in a modification proceeding. *Burns v. Burns*, 293 Neb. 633, 879 N.W.2d 375 (2016).

This section, which provides that a court may order joint custody, regardless of any parental agreement or consent, 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, may be applied to custody disputes in paternity actions. *State on behalf of Carter W. v. Anthony W.*, 24 Neb. App. 47, 879 N.W.2d 402 (2016).

42-364.15.

A motion to show cause gave the custodial parent notice that she could be found in contempt for denying parenting time which also gave notice of a possible modification pursuant to this section. *Martin v. Martin*, 294 Neb. 106, 881 N.W.2d 174 (2016).

ANNOTATIONS

42-364.16.

Though the Nebraska Child Support Guidelines are to be applied as a rebuttable presumption, offering flexibility and guidance rather than a stringent formula, the guidelines generally cannot be construed to allow for a deviation that is contrary to one of its specific provisions. *Donald v. Donald*, 296 Neb. 123, 892 N.W.2d 100 (2017).

42-365.

Equitable property division is a three-step process. The first step is to classify the parties' property as marital or nonmarital. The second step is to value the marital assets and liabilities of the parties. The third step is to calculate and divide the net marital estate between the parties in accordance with the principles contained in this section. *Osantowski v. Osantowski*, 298 Neb. 339, 904 N.W.2d 251 (2017).

42-366.

Appreciation or income of a nonmarital asset during the marriage is marital insofar as it was caused by the efforts of either spouse or both spouses. *Stephens v. Stephens*, 297 Neb. 188, 899 N.W.2d 582 (2017).

An agreement between a husband and wife concerning the disposition of their property, not made in connection with the separation of the parties or the dissolution of their marriage, is not binding upon the courts during a later dissolution proceeding. *Devney v. Devney*, 295 Neb. 15, 886 N.W.2d 61 (2016).

Investment earnings accrued during the marriage on the nonmarital portion of a retirement account may be classified as nonmarital where the party seeking the classification proves: (1) The growth is readily identifiable and traceable to the nonmarital portion of the account and (2) the growth is due solely to inflation, market forces, or guaranteed rate rather than the direct or indirect effort, contribution, or fund management of either spouse. *Stanosheck v. Jeanette*, 294 Neb. 138, 881 N.W.2d 599 (2016).

43-102.

This section and sections 43-103 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re *Adoption of Chase T.*, 295 Neb. 390, 888 N.W.2d 507 (2016).

Under this section, a county court or juvenile court will ordinarily have jurisdiction over an adoption proceeding. But district courts have inherent equity jurisdiction to resolve custody disputes, and they have jurisdiction over habeas proceedings challenging adoption proceedings. Accordingly, a county court's statutory jurisdiction over an adoption petition does not give it exclusive jurisdiction to resolve challenges to Nebraska's adoption statutes that could have foreclosed the adoption. In re *Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

43-103.

This section and sections 43-102 and 43-104, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re *Adoption of Chase T.*, 295 Neb. 390, 888 N.W.2d 507 (2016).

43-104.

This section and sections 43-102 and 43-103, construed together, require that before a county court entertains a decision on the merits in an adoption proceeding, all those statutorily required to consent have done so. In re *Adoption of Chase T.*, 295 Neb. 390, 888 N.W.2d 507 (2016).

Subsection (4) of this section does not apply to an acknowledged, legal father under another state's paternity determination. In re *Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

A finding of abandonment under subdivision (2)(b) of this section in an ongoing adoption proceeding is not a final, appealable order; such a finding does not terminate parental rights or standing in the proceedings, but merely eliminates the need for the abandoning parent's consent and authorizes the execution of substitute consent, and such a finding has no real and immediate effect on parental obligations, visitation, custody, or other matters pertaining to the parent's contact with the child during the pendency of the final judgment granting or denying the petition for adoption. In re *Adoption of Madysen S. et al.*, 293 Neb. 646, 879 N.W.2d 34 (2016).

ANNOTATIONS

43-104.05.

Subsection (3) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-104.22.

An acknowledged, legal father who has the right to consent to an adoption under another state's paternity determination is not a "man" within the meaning of subsection (11) of this section. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

Subsection (11) of this section does not authorize a county court to disestablish an acknowledged father's parental rights under another state's paternity determination. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016); In re Adoption of Jaelyn B., 293 Neb. 917, 883 N.W.2d 22 (2016).

43-111.

The parental preference doctrine applies in a habeas proceeding to obtain custody of a child who is the subject of an adoption proceeding if the parent's relinquishment is invalid or void. A court in a habeas proceeding may not deprive a parent of custody of his or her minor child unless a party affirmatively shows that the parent is unfit or has forfeited the right to perform his or her parental duties. The best interests standard is subject to the overriding recognition that the relationship between parent and child is constitutionally protected. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

Under this section, it is the adoption itself which terminates the parental rights, and until the adoption is granted, the parental rights are not terminated. When a parent's relinquishment of his or her child is invalid or void, this section governs when the parent's rights are terminated. Jesse B. v. Tylee H., 293 Neb. 973, 883 N.W.2d 1 (2016).

43-247.

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under subdivision (3)(a) of this section, which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

An order changing a permanency plan in a juvenile case adjudicated under subdivision (3)(a) of this section does not necessarily affect a substantial right of the parent for purposes of the final order statute, section 25-1902, when the order continues prior orders directed at family preservation and reunification or remedying the reasons that led to the adjudication. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile adjudication under subdivision (3)(c) of this section, no determination is made of a parent's ability to care for his or her child. Nor does the parent have the opportunity to respond to the allegations in the petition, because the allegations relate only to the juvenile and not to the parent. The absence of an opportunity for parents to respond to allegations about their fitness to raise their children implicates their due process rights. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has both the opportunity and the incentive to contest and appeal the adjudication, which the parent does not have when the child is adjudicated under subdivision (3)(c) of this section. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subdivision (3)(a) of this section, a parent has the opportunity to deny a petition's allegations, whereas in an adjudication under subdivision (3)(c), the juvenile responds but parents have no statutory right to respond. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

In a juvenile case adjudicated under subsection (3)(a) of this section, an order that continues prior dispositional orders but changes the permanency objective from family reunification to another objective, is a final, appealable order under the final order statute, section 25-1902, only if the parent's ability to achieve rehabilitation and family reunification has been clearly eliminated, because such an order affects a substantial right. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subdivision (3)(c) of this section is substantially different from subsection (3)(a), which, generally speaking, applies to situations in which a juvenile lacks proper parental care, support, or supervision. Because a subdivision (3)(a) adjudication addresses the issue of parental fitness, significant legal consequences can flow from such an

ANNOTATIONS

adjudication and greater procedural protections are required. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

Subsequent review orders in a juvenile case adjudicated under subdivision (3)(a) of this section do not typically affect a substantial right for purposes of appeal under the final order statute, section 25-1902, because the parent has been given the full and fair opportunity to respond to the allegations at the adjudication stage. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

At the adjudication stage, in order for a juvenile court to assume jurisdiction of a minor child, the State must prove the allegations of the petition by a preponderance of the evidence, and 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 Darius A., 24 Neb. App. 178, 884 N.W.2d 457 (2016).

43-251.01.

A youth was at serious risk of harm and detriment due to his refusal to attend school and develop basic life skills while living in the family home. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

"Harm," as defined by this section, encompasses not only physical injury and hurt, but also any material or tangible detriment. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

This section's exhaustion requirement demands evidence establishing that no other community-based resources have a reasonable possibility for success or that all options for community-based services have been thoroughly considered and none are feasible. In re Interest of Dana H., 299 Neb. 197, 907 N.W.2d 730 (2018).

43-274.

An order granting transfer from juvenile court to county court or district court is reviewed de novo on the record for an abuse of discretion. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in section 43-276; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

43-276.

In deciding whether to grant the requested waiver and to transfer the proceedings to juvenile court, the court having jurisdiction over a pending criminal prosecution must carefully consider the juvenile's request in the light of the criteria or factors set forth in this section. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

Pursuant to section 29-1816(3)(a), after considering the evidence and the criteria set forth in this section, the court shall transfer the case to juvenile court unless a sound basis exists for retaining the case in county court or district court. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

There is no arithmetical computation or formula required in a court's consideration of the statutory criteria or factors. Also, there are no weighted factors. It is a balancing test by which public protection and societal security are weighed against the practical and nonproblematical rehabilitation of the juvenile. State v. Tyler P., 299 Neb. 959, 911 N.W.2d 260 (2018).

In determining whether a case should be transferred from juvenile court to criminal court, a juvenile court should consider those factors set forth in this section; there are no weighted factors and no prescribed method by which more or less weight is assigned to a specific factor. In re Interest of Steven S., 299 Neb. 447, 908 N.W.2d 391 (2018).

43-285.

A juvenile court may not, under subsection (2) of this section, change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under section 43-1312.01 for establishing a juvenile guardianship. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

ANNOTATIONS

43-286.

When the State withdrew its motion to revoke probation prior to the motion's being heard, the juvenile court lacked authority to extend the juvenile's probation and to supply an additional condition of probation. In re Interest of Josue G., 299 Neb. 784, 910 N.W.2d 159 (2018).

Before a juvenile court can commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center, the Office of Probation Administration must review and consider thoroughly any reliable alternatives to that commitment and provide the court with a report that supports one of two conclusions: (1) There are untried conditions of probation or community-based services that have a reasonable possibility for success or (2) all levels of probation and options for community-based services have been studied thoroughly and none are feasible. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

In considering whether the State has shown that a juvenile should be placed at a youth rehabilitation and treatment center, a juvenile court is not required to repeat measures that were previously unsuccessful. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Once a juvenile court has entered a delinquency disposition under this section, it is plain error for the court to change that disposition when the State has not complied with the procedural requirements under subsection (5) of this section—unless the record shows that the juvenile was not denied any of the statutory procedural protections that the juvenile would have received if the State had followed the proper procedures. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

Under subsection (1) of this section, the State can file a motion to commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center at only three points in a delinquency proceeding: (1) before a court enters an original disposition, (2) before a court enters a new disposition following a new adjudication, and (3) before a court enters a new disposition following a motion to revoke probation or court supervision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When a juvenile court has already entered a disposition under subdivision (1)(a) of this section, a commitment to the Office of Juvenile Services under subdivision (1)(b) of this section must be consistent with the procedures for a new disposition under subsection (5) of this section. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

When the State files successive motions to change a juvenile's disposition under this section, a juvenile court can compare the facts as they existed when it entered a previous order to new facts arising after that order to determine whether a change in circumstances warrants a different decision. In re Interest of Alan L., 294 Neb. 261, 882 N.W.2d 682 (2016).

43-288.

A juvenile court's order that children under its jurisdiction have their immunizations brought up to date was within the power of that court, even where the Department of Health and Human Services did not indicate concern about the children's health or immunization history. In re Interest of Becka P. et al., 298 Neb. 98, 902 N.W.2d 697 (2017).

43-292.

Although a therapist testified that the mother and child had a bond and recommended that a relationship between them continue, the State adduced clear and convincing evidence that termination of the mother's parental rights was in the child's best interests. In re Interest of Alec S., 294 Neb. 784, 884 N.W.2d 701 (2016).

A court reviewing a termination of parental rights case on the ground of abandonment need not consider the 6-month period in a vacuum. Instead, the court may consider evidence of a parent's conduct, either before or after the statutory period, in determining whether the purpose and intent of that parent was to abandon his or her children. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

"Abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

So long as a parent was afforded due process of law, a defect during the adjudication phase does not preclude consideration of termination of parental rights. In re Interest of Isabel P. et al., 293 Neb. 62, 875 N.W.2d 848 (2016).

ANNOTATIONS

For purposes of subdivision (1) of this section, "abandonment" is a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. In re Interest of Austin G., 24 Neb. App. 773, 898 N.W.2d 385 (2017).

Under subdivision (2) of this section, the State must establish that the parental neglect required to terminate a parent's rights to a minor child was substantial and continuous or repeated; a handful of incidents, none of which resulted in permanent or serious injury to the children, is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

Under subdivision (9) of this section, the "aggravated circumstances" required for terminating parental rights are based on severe, intentional actions on the part of the parent; a single act of negligent conduct is insufficient. In re Interest of Elijah P. et al., 24 Neb. App. 521, 891 N.W.2d 330 (2017).

43-2,106.01.

Under this section, the adjudicated child's aunt lacked standing to appeal the juvenile court's order changing the child's placement and permanency plan. In re Interest of Joseph C., 299 Neb. 848, 910 N.W.2d 773 (2018).

Appellate courts in Nebraska have jurisdiction to hear appeals from final orders issued by juvenile courts in the same manner as appeals from the district courts. In re Interest of LeVanta S., 295 Neb. 151, 887 N.W.2d 502 (2016).

This section controls who has the right to appeal from a juvenile court's placement order. It does not authorize an adjudicated child's sibling to appeal from an adverse placement order. In re Interest of Nettie F., 295 Neb. 117, 887 N.W.2d 45 (2016).

Neither foster parents nor grandparents, as such, have a statutory right to appeal from a juvenile court order. In re Interest of Jackson E., 293 Neb. 84, 875 N.W.2d 863 (2016).

43-2,106.02.

Courts have the power to vacate or modify their own judgments and orders at any time during the term at which they were pronounced. But this power may not be used to circumvent the Legislature's power to fix the time limit to take an appeal. A court may not vacate an order or judgment and reinstate it at a later date just for the purpose of extending the time for appeal. One exception to this rule against using a court's power to vacate as a tool to extend the time for appeal is where a clerk fails to provide notice of a judgment to a party, thereby impairing the party's ability to appeal. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

Juvenile courts have the power to vacate or modify their own judgments and orders during or after the term in which they were made in the same manner as provided for district courts under section 25-2001. In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017).

43-512.03.

The Nebraska Court of Appeals has found no authority stating that the request from the Department of Health and Human Services is necessary evidence for the State to have standing in a contempt action under this section. House v. House, 24 Neb. App. 595, 894 N.W.2d 362 (2017).

43-512.04.

Any order imposing an obligation of child support is necessarily a legal determination of paternity. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

When making a determination of child support under section 42-364, the court must take into account and give effect to an existing order of support under this section. The court may order the existing order to remain in effect without modification after considering whether modification is warranted. Fetherkile v. Fetherkile, 299 Neb. 76, 907 N.W.2d 275 (2018).

43-1238.

A 2018 amendment to subsection (b) of this section clarifies that courts with jurisdiction over an "initial child custody determination" as that term is used in subsection (a) of this section also have jurisdiction and authority to make special findings of fact similar to those contemplated by 8 U.S.C. 1101(a)(27)(J) (Supp. V 2018). In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

ANNOTATIONS

Because a 2018 amendment to subsection (b) of this section merely clarifies the authority and procedure for making the factual findings in child custody cases, it is a procedural amendment, and applies to pending cases. In re Guardianship of Carlos D., 300 Neb. 646, 915 N.W.2d 581 (2018).

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. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

Unlike the Nebraska Child Custody Jurisdiction Act, the Uniform Child Custody Jurisdiction and Enforcement Act does not contain the alternative analysis allowing jurisdiction to be established in Nebraska when it is not the child's home state but when it is in the best interests of the child to exercise jurisdiction. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1239.

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under subsection (a) of this section or until the court declines to exercise jurisdiction under section 43-1244 on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The Uniform Child Custody Jurisdiction and Enforcement Act lists evidence concerning the child's care, protection, training, and personal relationships as relevant evidence regarding custody. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1244.

Exclusive and continuing jurisdiction remains with the district court under the Uniform Child Custody Jurisdiction and Enforcement Act either until jurisdiction is lost under section 43-1239(a) or until the court declines to exercise jurisdiction under this section on the basis of being an inconvenient forum. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1266.

The Uniform Child Custody Jurisdiction and Enforcement Act became operative on January 1, 2004, and establishes that all motions made in a child custody proceeding commenced prior to this date are governed by the prior law in effect at that time. The law governing child custody jurisdiction prior to the effective date of the Uniform Child Custody Jurisdiction and Enforcement Act was the Nebraska Child Custody Jurisdiction Act. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

43-1311.01.

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.02 and this section. Instead, section 43-1311.02(3) specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

Under this section and section 43-1311.02, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1311.02.

Despite the Legislature's creation of new duties for the Department of Health and Human Services to preserve sibling relationships, it has not created a private right of action for an adjudicated child's sibling to enforce the department's duties under section 43-1311.01 and this section. Instead, subsection (3) of this section specifically limits the right to enforce these duties to parties. In re Interest of Nizigiyimana R., 295 Neb. 324, 889 N.W.2d 362 (2016).

ANNOTATIONS

Under this section and section 43-1311.01, the Department of Health and Human Services' duties to make reasonable efforts to implement a joint-sibling placement do not depend upon the continued existence of the parent-child relationship with each of the siblings. The department's duties exist even if the siblings' custody orders were entered at separate times, even if a court has terminated a parent's relationship with each child, and even if the siblings have not previously lived together. Additionally, the department's duties regarding siblings do not depend on whether both siblings are adjudicated under section 43-247 or whether the department has placement authority for both siblings. Instead, the Legislature intended for the department to develop and maintain an adjudicated child's sibling relationships in a variety of circumstances. *In re Interest of Nizigiyimana R.*, 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1312.01.

A juvenile court may not, under section 43-285(2), change a juvenile's permanency plan from family reunification to guardianship unless there has been a prior adjudication of the juvenile under section 43-247(3)(a), which adjudication is a requirement under this section for establishing a juvenile guardianship. *In re Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

The elements under subsection (1) of this section form a conjunctive list, each of which must be met before a juvenile guardianship may be established. *In re Interest of LeVanta S.*, 295 Neb. 151, 887 N.W.2d 502 (2016).

43-1314.

Under this section, a preadoptive parent in a dependency proceeding is a foster parent whom a juvenile court has approved for a future adoption because a child's parent has surrendered his or her parental rights, a court-approved permanency plan does not call for the child's reunification with his or her parent, or the parents' parental rights have been or will be terminated. *In re Interest of Nizigiyimana R.*, 295 Neb. 324, 889 N.W.2d 362 (2016).

43-1402.

Under this section, establishment of paternity by acknowledgment is the equivalent of establishment of paternity by a judicial proceeding. *In re Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1406.

It is not contrary to Nebraska's public policy to recognize an acknowledged father's parental rights under another state's statutes when a Nebraska court has recognized an acknowledged father's parental rights under Nebraska's statutes. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016).

The Full Faith and Credit Clause requires states to give the same effect to a judgment in the forum state that it has in the state where the court rendered the judgment. This section extends that requirement for judgments to a sister state's paternity determination established through a voluntary acknowledgment. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016); *In re Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

Whether a paternity acknowledgment in a sister state gives an acknowledged father the right to block an adoption in Nebraska depends upon whether the acknowledgment confers that right in the state where it was made. *Jesse B. v. Tylee H.*, 293 Neb. 973, 883 N.W.2d 1 (2016); *In re Adoption of Jaelyn B.*, 293 Neb. 917, 883 N.W.2d 22 (2016).

43-1411.

A biological parent is barred from bringing a paternity action as his or her child's next friend under subdivision (2) of this section when the parent fails to show that the child is without a guardian because the child is living with a biological parent. *Tyler F. v. Sara P.*, 24 Neb. App. 370, 888 N.W.2d 537 (2016).

A parent's right to initiate paternity actions under this section is barred after 4 years, but actions brought by a guardian or next friend on behalf of children born out of wedlock may be brought within 18 years after the child's birth. *Tyler F. v. Sara P.*, 24 Neb. App. 370, 888 N.W.2d 537 (2016).

43-1412.01.

The disestablishment provisions of this section presuppose a legal determination of paternity and are not applicable until after a final judgment or other legal determination of paternity has been entered. *Erin W. v. Charissa W.*, 297 Neb. 143, 897 N.W.2d 858 (2017).

ANNOTATIONS

43-1504.

The applicability of the Nebraska Indian Child Welfare Act to an adoption proceeding turns not on the Indian status of the person who invoked the acts but on whether an "Indian child" is involved. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

43-1505.

In addition to the requirements under the adoption statutes, the Nebraska Indian Child Welfare Act adds two elements to adoption proceedings involving Indian children. First, subsection (4) of this section sets forth an "active efforts" element. Second, subsection (6) of this section sets forth a "serious emotional or physical damage" element. In re Adoption of Micah H., 295 Neb. 213, 887 N.W.2d 859 (2016).

43-1613.

When a referee makes a report and no exception is filed, the district court reviews the referee's report de novo on the record; however, if an exception is filed, the party filing an exception is entitled to a hearing and the district court as a court of equity has the discretion to allow the presentation of new or additional evidence at an exception hearing. State on behalf of Lockwood v. Laue, 24 Neb. App. 909, 900 N.W.2d 582 (2017).

43-1801.

Under this section, "context" means the context of the statutory language and not the factual circumstances of an individual's case. As such, persons who acted as grandparents but were not the "biological or adoptive parent of [the] minor child's biological or adoptive parent" have no right to grandparent visitation under the grandparent visitation statutes. Heiden v. Norris, 300 Neb. 171, 912 N.W.2d 758 (2018).

43-2922.

Joint legal custody is separate and distinct from joint physical custody, and an appellate court will address each separately. Donald v. Donald, 296 Neb. 123, 892 N.W.2d 100 (2017).

43-2923.

The best interests of a child require that the child's family remain appropriately active and involved in parenting with safe, appropriate, and continuing quality contact between the child and the child's family 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. Thompson v. Thompson, 24 Neb. App. 349, 887 N.W.2d 52 (2016).

This section of the Nebraska Parenting Act sets forth a nonexhaustive list of factors to be considered in determining the best interests of a child in regard to custody. Such factors include the relationship of the minor child with each parent, the desires of the minor child, the general health and well-being of the minor child, and credible evidence of abuse inflicted on the child by any family or household member. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

While the wishes of a child are not controlling in the determination of custody, if a child is of sufficient age and has expressed an intelligent preference, the child's preference is entitled to consideration. Floerchinger v. Floerchinger, 24 Neb. App. 120, 883 N.W.2d 419 (2016).

The trial court did not err in considering an 8 1/2-year-old child's wishes regarding custody, where there was no evidence that the court regarded the child's wishes as determinative of its decision and the child was of an age of comprehension and displayed sound reasoning. Kenner v. Battershaw, 24 Neb. App. 58, 879 N.W.2d 409 (2016).

43-2933.

To overcome the "bursting bubble" presumption set forth in subdivision (1)(c) of this section, a custodial parent must produce evidence that, even with a sex offender's access, the child or children are not at significant risk. If the evidence is produced, the presumption disappears and the trial court must weigh the evidence presented free from any legal presumptions. Hopkins v. Hopkins, 294 Neb. 417, 883 N.W.2d 363 (2016).

ANNOTATIONS

44-513.

The plain language of this section does not require insurance policies to charge identical copayments for a covered service, regardless of the type of provider. *Cookson v. Ramge*, 299 Neb. 128, 907 N.W.2d 296 (2018).

44-1095.

This section does not exempt a fraternal benefit society from paying sales and use taxes. *Woodmen of the World v. Nebraska Dept. of Rev.*, 299 Neb. 43, 907 N.W.2d 1 (2018).

44-2810.

The applicable standard of care in medical malpractice cases is established by the Nebraska Hospital-Medical Liability Act and has a locality focus, but otherwise is consistent with the general common-law standard of care. *Hemsley v. Langdon*, 299 Neb. 464, 909 N.W.2d 59 (2018).

46-702.

A look-back provision of a natural resources district's rules governing land irrigation had a substantial relation to the general welfare, because it allowed the natural resources district to ensure there is an adequate supply of ground water. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

46-739.

A look-back provision of a natural resources district's rules governing land irrigation established a baseline number of acres historically irrigated within the natural resources district and was in accord with the authority provided under the Nebraska Ground Water Management and Protection Act to limit the expansion of irrigated acres. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

46-750.

In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in section 84-917(6)(a), but is required to make independent factual determinations based upon the record and reach its own independent conclusions with respect to the matters at issue. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Upon an appeal from an order of a natural resources district, a district court reviews the natural resources district's decision de novo on the record of the natural resources district. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Where a natural resources district held a hearing and received formal proof regarding the merits of a request for a variance, its order denying the variance request was judicial in nature and was appealable to the district court. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

48-116.

There was insufficient evidence presented by the plaintiff to prove that the defendant employed a scheme, artifice, or device by either conferring the actual employer with apparent authority through manifestations to the homeowner or entering a joint venture with the actual employer. *Kohout v. Bennett Constr.*, 296 Neb. 608, 894 N.W.2d 821 (2017).

48-118.

This section and sections 48-118.01 through 48-118.04 should be read as a whole. In re Estate of *Evertson*, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.01.

In this section, the use of the term "the court" refers to the district court. In re Estate of *Evertson*, 295 Neb. 301, 889 N.W.2d 73 (2016).

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of *Evertson*, 295 Neb. 301, 889 N.W.2d 73 (2016).

ANNOTATIONS

This section requires that a subrogation claim against a third-party tort-feasor for workers' compensation benefits paid to a claimant must be brought in the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.02.

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.03.

This section and sections 48-118 through 48-118.04 should be read as a whole. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-118.04.

A distribution of the proceeds of a judgment or settlement under subsection (2) of this section must be fair and equitable to both the employee and the employer or its insurer. Kroemer v. Omaha Track Equip., 296 Neb. 972, 898 N.W.2d 661 (2017).

Although the trial court did not abuse its discretion in approving an injured employee's settlement of his third-party suit for \$150,000, the court's allocation of zero to an employer who had a subrogation interest exceeding \$200,000 was untenable. Kroemer v. Omaha Track Equip., 296 Neb. 972, 898 N.W.2d 661 (2017).

Because this section should be read along with sections 48-118 through 48-118.03, the use of the term "the court" in this section refers to the district court. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

District courts have exclusive subject matter jurisdiction over proceedings for the fair and equitable distribution of settlement proceeds from third-party tort-feasors subject to subrogation in workers' compensation cases. In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016).

48-125.

For the purposes of this section, a reasonable controversy exists if (1) there is a question of law previously unanswered by the Supreme Court, 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 compensation court about an aspect of an employee's claim, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. When there is some conflict in the medical testimony adduced at trial, reasonable but opposite conclusions could be reached by the compensation court. Nichols v. Fairway Bldg. Prods., 294 Neb. 657, 884 N.W.2d 124 (2016).

This section authorizes a 50-percent payment for waiting time involving delinquent payment of compensation and attorney fees where there is no reasonable controversy regarding an employee's claim for workers' compensation. Nichols v. Fairway Bldg. Prods., 294 Neb. 657, 884 N.W.2d 124 (2016).

48-139.

A verified release results in a full and complete discharge from all liability under the Nebraska Workers' Compensation Act but does not become effective until the Workers' Compensation Court files an order of dismissal with prejudice. Dragon v. Cheesecake Factory, 300 Neb. 548, 915 N.W.2d 418 (2018).

48-144.03.

Under subsection (10) of this section, an insurer need only prove that it sent a notice of cancellation to an employer by certified mail; the insurer's record of the certified mail tracking number used to send the notice itself was not sufficient to prove certified mail service. Greenwood v. J.J. Hooligan's, 297 Neb. 435, 899 N.W.2d 905 (2017).

48-162.01.

Although an injured employee ultimately wished to become self-employed growing and selling produce, a vocational rehabilitation plan designed to train the employee for full-time work as a supervisor or manager and geared toward returning the employee to employment paying wages similar to those earned prior to the injury

ANNOTATIONS

comported with the goal to return an injured employee to suitable employment. *Anderson v. EMCOR Group*, 298 Neb. 174, 903 N.W.2d 29 (2017).

Suitable employment is employment which is compatible with the employee's pre-injury occupation, age, education, and aptitude. *Anderson v. EMCOR Group*, 298 Neb. 174, 903 N.W.2d 29 (2017).

48-177.

This section gives a workers' compensation plaintiff the explicit right to dismiss the cause without prejudice so long as the plaintiff is represented by counsel and requests dismissal before the final submission of the case to the court. *Interiano-Lopez v. Tyson Fresh Meats*, 294 Neb. 586, 883 N.W.2d 676 (2016).

48-185.

Findings of fact made by the Workers' Compensation Court have the same force and effect as a jury verdict and will not be set aside unless clearly erroneous. *Hintz v. Farmers Co-op Assn.*, 297 Neb. 903, 902 N.W.2d 131 (2017).

An appellate court may modify an award of the compensation court when there is not sufficient competent evidence in the record to support the award. *Nichols v. Fairway Bldg. Prods.*, 294 Neb. 657, 884 N.W.2d 124 (2016).

48-665.

The time limitations provided for in sections 25-206 and 25-218 do not infringe upon the Department of Labor's ability to collect an overpayment by setoff under this section. *McCoy v. Albin*, 298 Neb. 297, 903 N.W.2d 902 (2017).

48-824.

This section implicitly authorizes a duty of fair representation claim against a labor union by a member of that union. *Lamb v. Fraternal Order of Police Lodge No. 36*, 293 Neb. 138, 876 N.W.2d 388 (2016).

48-838.

Public employee bargaining units, created under the State Employees Collective Bargaining Act, section 81-1369 et seq., must file any petition seeking to decertify an exclusive collective bargaining agent, under the Rules of the Nebraska Commission of Industrial Relations 9(II)(C)(1) (rev. 2015), during the period preceding the commencement of the statutorily required bargaining period in section 81-1379. *Nebraska Protective Servs. Unit v. State*, 299 Neb. 797, 910 N.W.2d 767 (2018).

48-1004.

Although the burden of production shifts between the plaintiff and the employer, the plaintiff retains the ultimate burden of persuasion, and the ultimate question is discrimination or retaliation vel non. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

One isolated comment about retirement is not enough to demonstrate pretext for purposes of age discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

Retirement inquiries can sometimes be so unnecessary and excessive as to constitute evidence of discriminatory harassment. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), framework is a procedural device of order of proof and production, designed to force an employer to reveal information that is available only to the employer, i.e., any unstated reasons for the adverse employment action, as well as any discretionary factors underlying its decision. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The ultimate issue in an age discrimination case is whether age was a determining factor in the employer's decision to take the adverse employment action. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

To survive summary judgment in a discrimination case, the nonmoving party must do more than simply create a factual dispute as to the issue of pretext; he or she must offer sufficient evidence for a reasonable trier of fact to infer discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

ANNOTATIONS

48-1101.

The three-part burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), is not the exclusive method of proving disparate treatment and was never intended to be rigid, mechanized, or ritualistic. *Hartley v. Metropolitan Util. Dist.*, 294 Neb. 870, 885 N.W.2d 675 (2016).

48-1102.

Concentrating, thinking, and communicating are major life activities under subdivision (9) of this section. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

Drug addiction is an impairment under subdivision (9) of this section, but it is not a disability unless it substantially limits a major life activity or is perceived by the employer to substantially limit a major life activity. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

To show that an employer regarded an employee as disabled under subdivision (9)(c) of this section, the employee must demonstrate either that (1) despite having no impairment at all, the employer mistakenly believed that the employee had an impairment that substantially limited one or more major life activities, or (2) the employee had a nonlimiting impairment that the employer mistakenly believed substantially limited one or more major life activities. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

Under subdivision (9) of this section, "major life activities" are those activities that are of central importance to daily life. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

Under subdivision (9) of this section, to be substantially limited in the major life activity of working, the plaintiff must show that he or she was significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. *Marshall v. EyeCare Specialties*, 293 Neb. 91, 876 N.W.2d 372 (2016).

48-1104.

Although the burden of production shifts between the plaintiff and the employer, the plaintiff retains the ultimate burden of persuasion, and the ultimate question is discrimination or retaliation *vel non*. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

Generally, a temporal connection between the protected conduct and the adverse employment action by itself is not enough to present a genuine factual issue on retaliation. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

The *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), framework is a procedural device of order of proof and production, designed to force an employer to reveal information that is available only to the employer, i.e., any unstated reasons for the adverse employment action, as well as any discretionary factors underlying its decision. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

To survive summary judgment in a discrimination case, the nonmoving party must do more than simply create a factual dispute as to the issue of pretext; he or she must offer sufficient evidence for a reasonable trier of fact to infer discrimination. *Oldfield v. Nebraska Machinery Co.*, 296 Neb. 469, 894 N.W.2d 278 (2017).

48-1114.

A plaintiff must establish a *prima facie* case of retaliation under this section by showing (1) he or she engaged in protected conduct, (2) he or she was subjected to an adverse employment action, and (3) there was a causal connection between the protected conduct and the adverse action. *Knapp v. Ruser*, 297 Neb. 639, 901 N.W.2d 31 (2017).

48-1118.

The 300-day statute of limitations began to run on the date that the employer notified the employee that she had been placed on furlough and that her employment would terminate months later if she did not obtain another position with the employer before that later date. *Brown v. Regional West Med. Ctr.*, 300 Neb. 937, 916 N.W.2d 590 (2018).

ANNOTATIONS

48-1201.

Parties may not waive the protections afforded under the Wage and Hour Act. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

48-1203.

Under subsection (2) of this section, an employer is not required to notify an employee that he or she will be compensated as a tipped employee. Instead, the employer only needs to prove the employee received tips sufficient to compensate the employee at a rate greater than or equal to the minimum wage. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

48-1221.

When bringing a claim of wage discrimination based on sex under subsection (1) of this section, a plaintiff must first establish a prima facie case by showing by a preponderance of the evidence that (1) the plaintiff was paid less than a person of the opposite sex employed in the same establishment; (2) for equal work on jobs requiring equal skill, effort, and responsibility; (3) which were performed under similar working conditions. If a plaintiff establishes a prima facie case of wage discrimination based on sex, the burden then shifts to the defendant to prove one of the affirmative defenses set forth in subsection (1) of this section. *Knapp v. Ruser*, 297 Neb. 639, 901 N.W.2d 31 (2017).

48-1231.

An employee was not entitled to relief under this section when the employer had never provided the employee with compensation and there was no provision in an employment agreement providing for compensation or a regular date of payment. *Mays v. Midnite Dreams*, 300 Neb. 485, 915 N.W.2d 71 (2018).

53-1,115.

This section defines which parties qualify as parties of record in the Nebraska Liquor Control Commission's proceedings. Thus, it defines which parties are "parties of record" that must be included in the district court's review of the commission's proceedings pursuant to section 84-917 of the Administrative Procedure Act. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

59-821.

Actual anticompetitive effects include, but are not limited to, reduction of output, increase in price, or deterioration in quality. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

Despite the broad remedial language of the Junkin Act, not every person claiming an injury from a Junkin Act violation can recover damages. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

To recover damages, a plaintiff must prove an antitrust injury. To constitute an antitrust injury, the injury must reflect the anticompetitive effect of the violation or the anticompetitive effects of anticompetitive acts made possible by the violation. *ACI Worldwide Corp. v. Baldwin Hackett & Meeks*, 296 Neb. 818, 896 N.W.2d 156 (2017).

59-1602.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of this section and section 59-1603 brought under section 59-1609. *Salem Grain Co. v. Consolidated Grain & Barge Co.*, 297 Neb. 682, 900 N.W.2d 909 (2017).

59-1603.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of this section and section 59-1602 brought under section 59-1609. *Salem Grain Co. v. Consolidated Grain & Barge Co.*, 297 Neb. 682, 900 N.W.2d 909 (2017).

ANNOTATIONS

59-1609.

Immunity under the Noerr-Pennington doctrine may be raised as an affirmative defense against claims for violations of sections 59-1602 and 59-1603 brought under this section. *Salem Grain Co. v. Consolidated Grain & Barge Co.*, 297 Neb. 682, 900 N.W.2d 909 (2017).

60-465.

Under the definition in the Motor Vehicle Operator's License Act, a power unit and hay grinder constitute a commercial motor vehicle. *State v. Neisius*, 293 Neb. 503, 881 N.W.2d 572 (2016).

60-471.

Under the definition in the Motor Vehicle Operator's License Act, a power unit and hay grinder constitute a motor vehicle. *State v. Neisius*, 293 Neb. 503, 881 N.W.2d 572 (2016).

60-4,105.

A letter from the Department of Motor Vehicles explaining the applicable law did not permit it to reinstate a commercial driver's license was not a final decision which canceled, suspended, revoked, or refused to issue or renew an operator's license and was not final and appealable. *Woodward v. Lahm*, 295 Neb. 698, 890 N.W.2d 493 (2017).

60-6,196.

The "current violation" referred to in section 60-6,197.03(8) may be either a violation of this section or a violation of the refusal statute, section 60-197. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

Being in "actual physical control" is distinct from "operating" a motor vehicle and is interpreted broadly to address the risk that a person not yet operating a motor vehicle might begin operating that vehicle with very little effort or delay. *State v. Pester*, 294 Neb. 995, 885 N.W.2d 713 (2016).

60-6,197.

Under *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), this section is not unconstitutional on its face, but it was unconstitutional as applied to defendant's conviction for refusing to submit to a warrantless chemical blood test, where the U.S. Supreme Court had expressly declared the exception for a warrantless search incident to a lawful arrest for drunk driving to be unconstitutional in regard to a blood test and where there were no exigent circumstances justifying the warrantless blood test. *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017).

The "current violation" referred to in section 60-6,197.03(8) may be either a violation of the driving under the influence statute, section 60-6,196, or a violation of this section. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

60-6,197.03.

The "current violation" referred to in subdivision (8) of this section may be either a violation of the driving under the influence statute, section 60-6,196, or a violation of the refusal statute, section 60-6,197. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

The fact that subdivision (8) of this section is not limited to driving under the influence violations does not subject persons convicted of refusal violations to multiple punishments for the same offense on the grounds that it "double dips" the act of refusal as a material element of the underlying refusal offense and as a sentencing factor. *State v. Wagner*, 295 Neb. 132, 888 N.W.2d 357 (2016).

The amendment by 2015 Neb. Laws, L.B. 605, removing the provision of section 29-2262 relating to jail time as a condition of probation for felony offenses did not implicitly repeal the provision in subsection (6) of this section that required 60 days in jail as a condition of probation. *State v. Thompson*, 294 Neb. 197, 881 N.W.2d 609 (2016).

ANNOTATIONS

60-6,197.04.

This section is constitutionally valid, facially and as applied to the defendant, and does not conflict with the 4th, 5th, and 14th Amendments to the U.S. Constitution, and Neb. Const. Art. I, secs. 7 and 12, as this section mandates a preliminary breath test, rather than a search incident to lawful arrest addressed in *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016), and where the arresting officer cited specific articulable facts to support administering the preliminary breath test. *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017).

60-6,197.09.

A certified or duly authenticated copy of the former judgment, from any court in which such judgment was had, for any such crimes formerly committed by the party so charged, if in the presentence investigation report, is sufficient prima facie evidence of such former judgment under this section when the defendant had the opportunity to offer rebuttal evidence at the first and second sentencing hearings, but chose not to do so. *State v. Arizola*, 295 Neb. 477, 890 N.W.2d 770 (2017).

60-6,198.

A 10-year driver's license revocation imposed on a defendant who was convicted of proximately causing serious bodily injury to another while driving under the influence was a mandatory part of the judgment of conviction and was not a condition of probation; therefore, the district court lacked jurisdiction to later reduce the revocation period. *State v. Irish*, 298 Neb. 61, 902 N.W.2d 669 (2017).

60-6,199.

The defendant, arrested for driving under the influence, was not deprived by police of his statutory right to an independent blood test where, after requesting an opportunity to undergo an independent blood test, the defendant was provided telephone access to make necessary arrangements, but failed to use such access to arrange for a timely independent blood test at jail. *State v. Jasa*, 297 Neb. 822, 901 N.W.2d 315 (2017).

60-6,213.

One cannot commit the greater offense of willful reckless driving without simultaneously committing the lesser offense of reckless driving; the only distinction between these offenses is intent. *State v. Scherbarth*, 24 Neb. App. 897, 900 N.W.2d 213 (2017).

60-6,214.

One cannot commit the greater offense of willful reckless driving without simultaneously committing the lesser offense of reckless driving; the only distinction between these offenses is intent. *State v. Scherbarth*, 24 Neb. App. 897, 900 N.W.2d 213 (2017).

67-404.

Under subsection (1) of this section, relations among the partners and between the partners and the partnership are also governed by the partnership agreement. *Fredericks Peebles v. Assam*, 300 Neb. 670, 915 N.W.2d 770 (2018).

68-919.

The Department of Health and Human Services may recover from a Medicaid recipient's estate sums paid on the recipient's behalf for room and board and other "nonmedical" expenses at nursing facilities. *In re Estate of Vollmann*, 296 Neb. 659, 896 N.W.2d 576 (2017).

Under the Medical Assistance Act, where a Medicaid recipient is not survived by a spouse or by a child who is either under the age of 21 or blind or totally and permanently disabled and where no undue hardship as provided in the Department of Health and Human Services' rules and regulations would result, the beneficiaries of a recipient's estate are not entitled to an inheritance at the public's expense. *In re Estate of Vollmann*, 296 Neb. 659, 896 N.W.2d 576 (2017).

ANNOTATIONS

69-2433.

A conviction for violating an Oklahoma statute prohibiting the transportation of a loaded pistol, rifle, or shotgun in a landborne motor vehicle over a public highway was sufficiently similar to section 37-522 to justify the denial of a concealed handgun permit application under subsection (8) of this section. *Shurigar v. Nebraska State Patrol*, 293 Neb. 606, 879 N.W.2d 25 (2016).

70-655.

A discount provided only to wholesale customers who renewed their contractual relationship with Nebraska Public Power District was not discriminatory under the circumstances. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

70-1008.

"Reintegration" for the purposes of section 70-1010 means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under this section and section 70-1010. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1010.

"Reintegration" for the purposes of this section means "to restore to unity after disintegration" and is distinct from any accompanying loss of revenue that might be associated with a loss of load following a transfer of electrical services under section 70-1008 and this section. In re Application of City of Neligh, 299 Neb. 517, 909 N.W.2d 73 (2018).

70-1327.

Despite de novo review, when credible evidence is in conflict on material issues of fact, the appellate court will consider and may give weight to the fact that the arbitration board under section 70-1301 et seq. observed the witnesses and accepted one version of the facts over another. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

On an appeal from the decision of an arbitration board convened under section 70-1301 et seq., trial in the appellate court is de novo on the record. In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018).

71-947.

An attorney validly appointed by a court to assist an indigent subject in a habeas corpus proceeding challenging the subject's custody or treatment under the Sex Offender Commitment Act is entitled to attorney fees. *D.I. v. Gibson*, 295 Neb. 903, 890 N.W.2d 506 (2017).

71-1214.

The proper procedure to be followed when taking an appeal from a final order of the district court under this section is the general appeal procedure set forth in section 25-1912. In re Interest of L.T., 295 Neb. 105, 886 N.W.2d 525 (2016).

75-109.01.

Under subsection (2) of this section, the Public Service Commission's authority to regulate public grain warehouses is purely statutory, in contrast to its plenary authority to regulate common carriers under the state Constitution. *Amend v. Nebraska Pub. Serv. Comm.*, 298 Neb. 617, 905 N.W.2d 551 (2018).

76-106.

This section eliminates common-law technicalities and exactions regarding the language used to make a reservation in a deed; whether a provision is a reservation does not depend upon the use of a particular word but upon the character and effect of the provision itself. *Walters v. Sporer*, 298 Neb. 536, 905 N.W.2d 70 (2017).

ANNOTATIONS

76-705.

A job is not the type of property for which inverse condemnation claims can be brought. *Craw v. City of Lincoln*, 24 Neb. App. 788, 899 N.W.2d 915 (2017).

76-726.

An affidavit is admissible to introduce evidence relating to an award of attorney fees under this section. *TransCanada Keystone Pipeline v. Nicholas Family*, 299 Neb. 276, 908 N.W.2d 60 (2018).

"Incurred" under the plain language of this section means that landowners be indebted to counsel for services rendered and that the fees charged be reasonable. *TransCanada Keystone Pipeline v. Nicholas Family*, 299 Neb. 276, 908 N.W.2d 60 (2018).

Landowners seeking the reimbursement of fees owed under this section need not show that the fees sought were actually paid, but only that they were actually incurred. *TransCanada Keystone Pipeline v. Nicholas Family*, 299 Neb. 276, 908 N.W.2d 60 (2018).

76-1006.

Section 76-1012 provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While section 76-1012 contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in this section. Section 76-1012 adds no additional requirements for notices of default to those in this section. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section imposes the requirement for notices of default, while section 76-1012 provides the means by which a trustor may cure the default of an obligation secured by a trust deed. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section includes detailed requirements that a trustee must satisfy prior to exercising the power of sale in a trust deed. A trustee must file with the county register of deeds a notice of default identifying the trust deed, stating that a breach of the obligation secured by the trust deed has occurred, setting forth the nature of the breach, and stating its election to sell the property to satisfy the obligation. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-1008.

A proper reading of this section provides that unless the person or institution is a party to the trust deed at issue, that person or institution is not entitled to notice unless it is requested under subsection (1) of this section. *First Neb. Ed. Credit Union v. U.S. Bancorp*, 293 Neb. 308, 877 N.W.2d 578 (2016).

76-1012.

Section 76-1006 imposes the requirement for notices of default, while this section provides the means by which a trustor may cure the default of an obligation secured by a trust deed. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides a trustor the ability to cure a default on an obligation secured by a trust deed prior to a trustee's sale and have the trust deed reinstated. While this section contemplates and references the filing of a notice of default, it does not itself require the notice of default or specify the necessary contents of a notice of default, which requirements are set forth in section 76-1006. This section adds no additional requirements for notices of default to those in section 76-1006. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

This section provides that in order to cure a default, the trustor must pay to the beneficiary the entire amount then due. Thus, a default must be cured by tendering payment. A tender of payment is more than being willing and able to pay. It is an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

ANNOTATIONS

76-1013.

This section provides a mechanism for creditors to recover a deficiency judgment for amounts still due and owing after a trustee's sale. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

Under this section, a below fair market value sale would reduce the amount the creditor could recover in a deficiency action. But, depending upon the mathematics of the transaction, a below market sale would not necessarily be a total bar to a recovery of a deficiency. *First Nat. Bank North Platte v. Cardenas*, 299 Neb. 497, 909 N.W.2d 79 (2018).

76-2005.

A right of first refusal is a nonvested property interest. *Walters v. Sporer*, 298 Neb. 536, 905 N.W.2d 70 (2017).

77-101.

This section did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-119.

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in this section to be used to define "depreciable repairs or parts" in section 77-2708.01, because the term "repairs" in section 77-2708.01 made the phrases contextually different. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-202.

A conservation group qualified as a "charitable organization" for purposes of subdivision (1)(d) of this section. *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 906 N.W.2d 646 (2018).

A tax exemption for charitable use is allowed because those exemptions benefit the public generally and the organization performs services which the state is relieved pro tanto from performing. *Platte River Crane Trust v. Hall Cty. Bd. of Equal.*, 298 Neb. 970, 906 N.W.2d 646 (2018).

77-1327.

Section 77-5027(3) does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under subsection (3) of this section. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under subsection (3) of this section are competent evidence to support an equalization order under section 77-5026 without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under section 77-5026, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

77-1343.

The county assessor's valuation of homesite acres was not arbitrary, capricious, or unreasonable, where the valuation was based on the sale of similarly sized parcels within the same market and where sufficient differences justified the \$14,000 difference in valuation from another nearby property. *Burdess v. Washington Cty. Bd. of Equal.*, 298 Neb. 166, 903 N.W.2d 35 (2017).

The county assessor's valuation of wasteland was not arbitrary, capricious, or unreasonable, where the valuation was based on a market analysis of arm's-length sales of property sold, subject to certain probable and legal agricultural purposes and uses. *Burdess v. Washington Cty. Bd. of Equal.*, 298 Neb. 166, 903 N.W.2d 35 (2017).

The special valuation statutes were enacted because of the economic impact that urban development and other nonagricultural development have on neighboring agricultural and horticultural land. Special valuation protects persons engaged in agricultural endeavors from excessive tax burdens that might force them to discontinue those endeavors. *Burdess v. Washington Cty. Bd. of Equal.*, 298 Neb. 166, 903 N.W.2d 35 (2017).

ANNOTATIONS

77-1507.01.

A presumption exists that a county board of equalization has faithfully performed its official duties in making a property tax assessment and has acted upon sufficient competent evidence to justify its action. The presumption disappears when competent evidence to the contrary is presented. Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence. *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 906 N.W.2d 285 (2018).

When the Tax Equalization and Review Commission hears a property tax protest and performs the factfinding functions that a county board of equalization would have if the county had timely provided notice to the taxpayer, the taxpayer's burden of persuasion is by a preponderance of the evidence. *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 906 N.W.2d 285 (2018).

77-1807.

The successful bidder under the bid-down procedure acquires only an interest in the undivided percentage of the real estate. *Adair Asset Mgmt. v. Terry's Legacy*, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-1827.

A person with a "mental disorder" under this section is one who suffers from a condition of mental derangement which actually prevents the sufferer from understanding his or her legal rights or from instituting legal action, and a mental disorder within the meaning of this section is an incapacity which disqualifies one from acting for the protection of one's rights. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

This section extends the redemption period for a mental disorder only if the owner had a mental disorder at the time of the property's sale. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1832.

Under this section, service need only be provided to the owner of record at the address where the property tax statement was mailed and may only be done by certified mail, return receipt requested. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1844.

This section sets forth the conditions precedent to questioning title conveyed under a tax deed; to obtain standing to redeem property after the issuance of a tax deed, even if title under a tax deed is void or voidable, a party must satisfy these conditions precedent. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

To comply with this section, a party only needs to show that it has tendered the tax payment to the treasurer, not that the taxes have actually been paid. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

To satisfy the tax payment requirement in this section, a party must show the tender or payment of taxes due to the county treasurer. *Wisner v. Vandelay Investments*, 300 Neb. 825, 916 N.W.2d 698 (2018).

77-1902.

Where the successful bidder purchased a tax sale certificate by bidding down to a 1-percent undivided interest of property, its lien to be judicially foreclosed was limited to 1 percent of the property. *Adair Asset Mgmt. v. Terry's Legacy*, 293 Neb. 32, 875 N.W.2d 421 (2016).

77-2703.

This section places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under section 77-2708. *Aline Bae Tanning v. Nebraska Dept. of Rev.*, 293 Neb. 623, 880 N.W.2d 61 (2016).

77-2708.

Section 77-2703 places the legal incidence of admissions taxes on the consumer, not the retailer. Therefore, the consumer, and not the retailer, has standing to claim a refund of admissions taxes under this section. *Aline Bae Tanning v. Nebraska Dept. of Rev.*, 293 Neb. 623, 880 N.W.2d 61 (2016).

ANNOTATIONS

77-2708.01.

"[D]epreciable repairs or parts" means repairs or parts that appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

Section 77-101 did not require the definition of "[d]epreciable tangible personal property" in section 77-119 to be used to define "depreciable repairs or parts" in this section, because the term "repairs" in this section made the phrases contextually different. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

The legislative intent of creating the refund for "depreciable repairs or parts" in this section was to prevent double taxation but also to ensure that all depreciable repairs and parts were subject to personal property tax. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

The party claiming a tax refund must establish its entitlement to the refund. *Farmers Co-op v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

77-2715.08.

This section does not include any "economic activity" or "business purpose" requirements for creating a qualified corporation and merely sets forth certain requirements for the shareholders at one specific point in time for the special capital gains election. *Stewart v. Nebraska Dept. of Rev.*, 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-2715.09.

This section does not contain language discussing underlying sales and transactions or requiring a purpose for taking actions to comply with the section other than qualifying for the special capital gains election. Courts and executive agencies lack the authority to add such language where a statute is clear and not ambiguous. *Stewart v. Nebraska Dept. of Rev.*, 294 Neb. 1010, 885 N.W.2d 723 (2016).

77-5016.

Where the only issue raised on appeal to the Nebraska Tax Equalization and Review Commission was whether a natural resources district's parcels were being used for a public purpose as required for property tax exemption, the commission lacked jurisdiction to consider questions beyond whether the parcels were being used for a public purpose, including whether the parcels were leased at fair market value and whether assessment of taxes to surface lessees would violate due process. *Upper Republican NRD v. Dundy Cty. Bd. of Equal.*, 300 Neb. 256, 912 N.W.2d 796 (2018).

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by subdivision (4) of this section. Instead, the show cause hearing is part of equalization procedures under sections 77-5022, 77-5023, and 77-5026. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5019.

Questions of law arising during appellate review of Tax Equalization and Review Commission decisions are reviewed de novo. *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 906 N.W.2d 285 (2018).

On appeal, an order that subsection (5) of this section defines as a "final decision" is reviewed for error on the record. When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. An agency decision is supported by competent evidence, sufficient evidence, or substantial evidence if the agency could reasonably have found the facts as it did on the basis of the testimony and exhibits contained in the record before it. Agency action is arbitrary, capricious, and unreasonable if it is taken in disregard of the facts or circumstances of the case, without some basis which would lead a reasonable and honest person to the same conclusion. Agency action taken in disregard of the agency's own substantive rules is also arbitrary and capricious. *County of Douglas v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 501, 894 N.W.2d 308 (2017).

ANNOTATIONS

77-5022.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5023 and 77-5026. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5023.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5026. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5026.

The procedures for a hearing to show cause why an adjustment should not be made to a county's valuation of a class or subclass of real property are not governed by section 77-5016(4). Instead, the show cause hearing is part of equalization procedures under this section and sections 77-5022 and 77-5023. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

The Property Tax Administrator's required reports under section 77-1327(3) are competent evidence to support an equalization order under this section without including the sales file information for each real property transaction. Accordingly, in a show cause hearing under this section, a county has the burden to demonstrate that the Tax Equalization and Review Commission should not rely on the reports. *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

77-5027.

Subsection (3) of this section does not require the Property Tax Administrator to set out every property sale that the Department of Revenue's assessment division has included in its statistical analyses under section 77-1327(3). *County of Webster v. Nebraska Tax Equal. & Rev. Comm.*, 296 Neb. 751, 896 N.W.2d 887 (2017).

79-289.

The requirements under subsection (3) of this section are mandatory conditions precedent for a district court to obtain subject matter jurisdiction over a proceeding for further review. *J.S. v. Grand Island Public Schools*, 297 Neb. 347, 899 N.W.2d 893 (2017).

81-8,108.

Registered surveyors are professionals for purposes of professional negligence. *Bixenmann v. Dickinson Land Surveyors*, 294 Neb. 407, 882 N.W.2d 910 (2016).

81-8,117.

Registered surveyors are professionals for purposes of professional negligence. *Bixenmann v. Dickinson Land Surveyors*, 294 Neb. 407, 882 N.W.2d 910 (2016).

81-8,209.

A state officer or employee cannot be sued in his or her individual capacity for negligence claims arising out of actions performed while acting within the scope of his or her office or employment. *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

81-8,210.

The Public Service Commission is a state agency for purposes of the State Tort Claims Act, and as a result, the provisions of the act are applicable in tort suits against the commission. *Amend v. Nebraska Pub. Serv. Comm.*, 298 Neb. 617, 905 N.W.2d 551 (2018).

ANNOTATIONS

Under subsection (4) of this section, state officers and employees acting within the scope of their offices or employment can be sued for tortious conduct only in their official capacities. *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

81-8,213.

The 6-month filing extension in section 81-8,227 runs from the first date on which the claim could have been withdrawn under this section, not the date the claim is actually withdrawn. *Komar v. State*, 299 Neb. 301, 908 N.W.2d 610 (2018).

81-8,219.

An exception to the State's sovereign immunity under this section is not a waivable affirmative defense which the State must plead and prove, but, rather, is a matter of sovereign immunity implicating subject matter jurisdiction which the State may raise at any time, including for the first time on appeal. *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

Tort claims by a parolee against State officials and employees were barred by the false imprisonment exception, under subdivision (4) of this section, where the parolee alleged that he turned himself in to authorities and was reincarcerated for almost 2 months despite his protests that he had been correctly paroled. *Davis v. State*, 297 Neb. 955, 902 N.W.2d 165 (2017).

The misrepresentation exception to the waiver of sovereign immunity, which must be strictly construed in favor of the government, can apply to claims for personal injuries as well as economic injuries and to claims not involving business transactions. *Jill B. & Travis B. v. State*, 297 Neb. 57, 899 N.W.2d 241 (2017).

The decision to seek a mental health commitment of an inmate who was believed to be mentally ill and dangerous was discretionary where the inmate was not admitted for emergency protective custody. *Holloway v. State*, 293 Neb. 12, 875 N.W.2d 435 (2016).

81-8,227.

The 6-month filing extension in this section runs from the first date on which the claim could have been withdrawn under section 81-8,213, not the date the claim is actually withdrawn. *Komar v. State*, 299 Neb. 301, 908 N.W.2d 610 (2018).

A claimant who files a tort claim with the risk manager of the State Claims Board prior to 18 months after the claim has accrued and who, as a result, could have withdrawn a claim from the board prior to the expiration of the 2-year statute of limitations should be given an additional 6 months from the time the claimant could have withdrawn the claim from the board, rather than an additional 6 months from the time the claimant actually withdrew the claim, to file a complaint in the district court. A claimant cannot delay the expiration of the statute of limitations by choosing to delay the withdrawal of a claim from the board. *Komar v. State*, 24 Neb. App. 692, 897 N.W.2d 310 (2017).

81-1369.

Public employee bargaining units, created under the State Employees Collective Bargaining Act, must file any petition seeking to decertify an exclusive collective bargaining agent, under the Rules of the Nebraska Commission of Industrial Relations 9(II)(C)(1) (rev. 2015), during the period preceding the commencement of the statutorily required bargaining period in section 81-1379. *Nebraska Protective Servs. Unit v. State*, 299 Neb. 797, 910 N.W.2d 767 (2018).

81-1379.

Public employee bargaining units, created under the State Employees Collective Bargaining Act, section 81-1369 et seq., must file any petition seeking to decertify an exclusive collective bargaining agent, under the Rules of the Nebraska Commission of Industrial Relations 9(II)(C)(1) (rev. 2015), during the period preceding the commencement of the statutorily required bargaining period in this section. *Nebraska Protective Servs. Unit v. State*, 299 Neb. 797, 910 N.W.2d 767 (2018).

81-1848.

Although the victim's parents, and not the victim's sister, were statutorily defined "victims" under section 29-119, the court did not abuse its discretion in allowing the sister to read her impact statement at sentencing where the

ANNOTATIONS

parents were elderly, lived out of state, and did not want to participate in the resentencing. *State v. Thieszen*, 300 Neb. 112, 912 N.W.2d 696 (2018).

83-1,110.

This section, which makes a convicted offender sentenced to life imprisonment ineligible for parole until the life sentence is commuted to a term of years is a permissible condition under Neb. Const. Art. IV, sec. 13, and it does not infringe on the Board of Parole's authority to grant paroles. *Adams v. State*, 293 Neb. 612, 879 N.W.2d 18 (2016).

83-1,118.

The Department of Correctional Services acted beyond its authority when, due to a miscalculation of good-time credit, it discharged the defendant before completion of the defendant's lawful sentence. *Evans v. Frakes*, 293 Neb. 253, 876 N.W.2d 626 (2016).

83-4,123.

An inmate's right of access to the courts in Nebraska is no greater than those rights of access to the federal courts under the U.S. Constitution. *Jacob v. Nebraska Dept. of Corr. Servs.*, 294 Neb. 735, 884 N.W.2d 687 (2016).

84-712.01.

If each branch of government could shield its records simply by appealing to the fact that they were created in the course of any number of essential branch functions, then the protections of the public interest embodied in the public records statutes would be a nullity. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Under subsection (1) of this section, the Judicial Branch Education advisory committee's unwritten policy of keeping its records confidential did not, in light of section 24-205.01, governing the committee's power to develop standards and policies for review by the Nebraska Supreme Court, render such records confidential under the statutory exception to the public records laws for records not to be made public according to this section, although subdivision (2)(a) of section 24-205.01 contemplated promulgation of rules regarding the confidentiality of Judicial Branch Education records, where no such rules had been adopted by the Nebraska Supreme Court. *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 894 N.W.2d 788 (2017).

Presentence reports are not "public records" under this section. *State ex rel. Unger v. State*, 293 Neb. 549, 878 N.W.2d 540 (2016).

84-712.05.

Under subdivision (3) of this section, a public power district could not withhold its proprietary or commercial information that would give advantage to business competitors, because the district failed to demonstrate by clear and conclusive evidence that the information would serve no public purpose. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018).

84-901.

A natural resources district is not an agency within the meaning of the Administrative Procedure Act. *Lingenfelter v. Lower Elkhorn NRD*, 294 Neb. 46, 881 N.W.2d 892 (2016).

84-917.

A proceeding in district court, pursuant to the Administrative Procedure Act, for review of a decision by an administrative agency is not an "appeal" in the strict sense of the term, meaning the power and authority conferred upon a superior court to reexamine and redetermine causes tried in inferior courts, but, rather, is the institution of a suit to obtain judicial branch review of a nonjudicial branch decision. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

Because the Administrative Procedure Act is a procedural statute that applies to a variety of agencies and types of agency proceedings, determining which parties qualify, for purposes of this section, as "parties of record" requires looking at the nature of the administrative proceeding under review. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

ANNOTATIONS

The requirement under this section that a petitioner make all "parties of record" in the agency proceeding parties to the proceeding for review is necessary to confer subject matter jurisdiction on the district court. *Kozal v. Nebraska Liquor Control Comm.*, 297 Neb. 938, 902 N.W.2d 147 (2017).

In a review de novo on the record, a district court is not limited to a review subject to the narrow criteria found in subdivision (6)(a) of this section, but is required to make independent factual determinations based upon the record and reach its own independent conclusions with respect to the matters at issue. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).

Upon an appeal from an order of a natural resources district, a district court reviews the natural resources district's decision de novo on the record of the natural resources district. *Medicine Creek v. Middle Republican NRD*, 296 Neb. 1, 892 N.W.2d 74 (2017).



CHAPTER 1

ACCOUNTANTS

Section

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

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

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

(a) Such owners shall be:

(i) Natural persons;

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

(iii) A partnership or limited liability company; or

(iv) A corporation;

(b) Such owners, whether direct or beneficial, who are natural persons shall not exceed, in the aggregate, forty-nine percent of the total number of owners of such firm;

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

(d) Such owners shall not, in the aggregate, directly or beneficially, comprise a majority of the owners of a firm;

(e) Such owners shall not, in the aggregate, directly or beneficially, hold one half or more of the equity capital of the firm and possess majority voting rights of the firm;

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

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

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

(i) Such owners who are natural persons shall not be direct or beneficial owners of a firm engaged in the practice of public accountancy without board approval if such natural persons (i) have been convicted of any felony under the

laws of any state, of the United States, or of any other jurisdiction, (ii) have been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction, (iii) have had their professional or vocational licenses, if any, suspended or revoked by a licensing agency of any state of the United States or of any other jurisdiction or such persons have otherwise been the subject of other final disciplinary action by any such agency, or (iv) are in violation of any rule or regulation regarding character or conduct adopted and promulgated by the board relating to owners who are not certified public accountants;

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

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

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

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

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

Source: Laws 1994, LB 957, § 1; Laws 1997, LB 114, § 53; Laws 1999, LB 346, § 2; Laws 2009, LB31, § 34; Laws 2019, LB49, § 1. Effective date September 1, 2019.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

CHAPTER 2 AGRICULTURE

Article.

4. Healthy Soils Task Force. 2-401 to 2-404.
5. Nebraska Hemp Farming Act. 2-501 to 2-519.
9. Noxious Weed Control. 2-958, 2-969.
15. Nebraska Natural Resources Commission.
 - (a) General Provisions. 2-1501, 2-1507.
 - (e) Water Planning and Review Process. 2-15,100.
26. Pesticides. 2-2624 to 2-2656.
32. Natural Resources. 2-3226.14, 2-3241.
39. Milk.
 - (d) Nebraska Milk Act. 2-3965 to 2-3982.
40. Grain Sorghum Development. 2-4018, 2-4021.
42. Conservation Corporation. 2-4215.
44. Nebraska Right to Farm Act. 2-4403, 2-4404.
46. Erosion and Sediment Control. 2-4604.
57. Industrial Hemp. 2-5701.

ARTICLE 4

HEALTHY SOILS TASK FORCE

Section

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

2-401 Legislative findings.

The Legislature finds that:

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

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

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

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

(5) Appropriate planning and coordination is needed to speed up and coordinate the adoption of conservation practices that rebuild and protect soil carbon to increase water holding capacity and enhance the vitality of the subsurface

microbiome for landowners to capitalize on the economic and production benefits of soil health, while simultaneously enhancing water quality, capturing carbon, building resilience to drought and pests, reducing greenhouse gas emissions, expanding pollinator and other wildlife habitat, and protecting fragile ecosystems for a more sustainable future; and

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

Source: Laws 2019, LB243, § 1.
Effective date April 18, 2019.

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

(1) The Healthy Soils Task Force is created.

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 2019, LB243, § 2.
Effective date April 18, 2019.

2-403 Healthy Soils Task Force; duties.

(1) The Healthy Soils Task Force shall:

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

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

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

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

(iii) The contribution of livestock to soil health;

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

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

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

Source: Laws 2019, LB243, § 3.

Effective date April 18, 2019.

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

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

Source: Laws 2019, LB243, § 4.

Effective date April 18, 2019.

ARTICLE 5**NEBRASKA HEMP FARMING ACT**

Section
2-501. Act, how cited.

Section

- 2-502. Statement of policy; purpose of act.
- 2-503. Terms, defined.
- 2-504. Authorized activities; department; duties; rules and regulations.
- 2-505. Cultivation of hemp; application; form; contents; application fee; site registration fee; cultivator license; expiration; renewal; change in ownership or location; effect.
- 2-506. Processor-handler or broker; license; application; form; contents; application fee; site registration fee; processor-handler or broker license; expiration; renewal; change in ownership or location; effect.
- 2-507. Approval and denial of license applications; rules and regulations; minimum qualifications; denial of license; hearing.
- 2-508. License fees; delinquent fee; administrative fee; waiver by department; grounds.
- 2-509. Nebraska Hemp Program Fund; established; use; investment.
- 2-510. Cultivator, processor-handler, or broker; consent to certain actions; acknowledges risk of financial loss under act.
- 2-511. Unintentional violations; director; powers; criminal enforcement; ineligibility to obtain license; corrective action plan; contents; administrative fine; recovery.
- 2-512. Intentional violations of act; director; duties; ineligibility to obtain license; hearing.
- 2-513. Order of director; hearing; request; decision; appeal.
- 2-514. Testing; department; powers; list of approved testing facilities; report.
- 2-515. Cultivator, processor-handler, or other person transporting hemp; duties; form bill of lading; department; duties; prohibited acts; peace officer; powers; violation; penalty.
- 2-516. State plan; director; duties; contents; disapproval; amended plan; alteration or amendment authorized.
- 2-517. Nebraska Hemp Commission; members; qualifications; terms; quorum; expenses; powers and duties; report; contents.
- 2-518. Hemp Promotion Fund; established; use; investment.
- 2-519. Fees; records; violations; penalty.

2-501 Act, how cited.

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

Source: Laws 2019, LB657, § 1.

Operative date May 31, 2019.

2-502 Statement of policy; purpose of act.

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

- (1) Align state law with federal law regarding the cultivation, handling, marketing, and processing of hemp and hemp products;
- (2) Promote the cultivation and processing of hemp and open up new commercial markets for farmers and businesses through the sale of hemp products;
- (3) Establish testing and compliance procedures;
- (4) Promote the expansion of Nebraska's hemp industry to the maximum extent permitted by law and allow farmers and businesses to cultivate, handle, and process hemp and sell hemp products for commercial purposes;
- (5) Encourage and empower research into hemp cultivation and the processing of hemp products at postsecondary institutions in the state and in the private sector;

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

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

Source: Laws 2019, LB657, § 2.

Operative date May 31, 2019.

2-503 Terms, defined.

For purposes of the Nebraska Hemp Farming Act:

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

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

(3) Commission means the Nebraska Hemp Commission;

(4) Cultivate or cultivating means planting, watering, growing, and harvesting a hemp plant or crop;

(5) Cultivator means a person who cultivates hemp;

(6) Department means the Department of Agriculture;

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

(8) Federally defined THC level for hemp means a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis as defined in section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019;

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

(10) Handle or handling means possessing or storing hemp plants for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process hemp. Handle or handling also includes possessing or storing hemp plants in a vehicle for any period of time other than during its actual transport from the premises of a person licensed to cultivate or process hemp to the premises of another licensed person. Handle or handling does not include possessing, storing, or transporting finished hemp products;

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

(12) Licensee means an individual or a business entity possessing a license issued by the department under the Nebraska Hemp Farming Act to cultivate, handle, process, or broker hemp;

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

(14) Nebraska heirloom cannabis plant or seed means a hemp plant or seed from the plant *Cannabis sativa* L. that possesses characteristics of a unique and

specialized cannabis seed variety that is present in Nebraska or has been recognized as produced in Nebraska;

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

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

(17) Process or processing means converting hemp into a marketable form;

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

(19) Site means an area defined by the same legal description in a field, greenhouse, or other outdoor area or indoor structure;

(20) Testing facility means a testing facility approved by the department; and

(21) THC means tetrahydrocannabinol.

Source: Laws 2019, LB657, § 3.

Operative date May 31, 2019.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

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

(1) Notwithstanding any other provision of law, it shall be lawful:

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

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

(2) The department shall establish, operate, and administer a program to license and regulate cultivators, processor-handlers, and brokers that meets the requirements of section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019, and the Nebraska Hemp Farming Act. Nebraska heirloom cannabis plant or seed not being cultivated for commercial purposes is not subject to the Nebraska Hemp Farming Act.

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

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

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

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

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

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

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

(g) Any other standard, practice, or procedure required by the Nebraska Hemp Farming Act.

Source: Laws 2019, LB657, § 4.

Operative date May 31, 2019.

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

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

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

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

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

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

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

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

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

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

sites where hemp is to be cultivated are under the control of the applicant and that the department shall have unlimited access to all such sites.

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

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

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

(8) An application and supporting documents submitted to the department under this section are not public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such information may be submitted to the United States Department of Agriculture pursuant to the requirements of section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019, or any other federal statute, rule, or regulation, and may be submitted to law enforcement.

Source: Laws 2019, LB657, § 5.

Operative date May 31, 2019.

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

(1) Except for approved testing facilities, a person shall not process, handle, or broker hemp in this state unless the person meets the requirements of section 2-5701 or is in compliance with this section and licensed as a processor-handler or broker under the Nebraska Hemp Farming Act.

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

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

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

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

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

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

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

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

(5) After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to section 2-516, an initial processor-handler or broker license application may be submitted at any time. An initial processor-handler or broker license issued by the department expires on December 31 in the calendar year for which it was issued.

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

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

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

(9) An application and supporting documents submitted to the department under this section are not public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such information may be submitted to the United States Department of Agriculture pursuant to the requirements of section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019, or any other federal statute, rule, or regulation, and may be submitted to law enforcement.

Source: Laws 2019, LB657, § 6.

Operative date May 31, 2019.

2-507 Approval and denial of license applications; rules and regulations; minimum qualifications; denial of license; hearing.

(1) The department may adopt and promulgate rules and regulations governing the approval and denial of cultivator, processor-handler, and broker license applications. Such applications shall be denied if they are incomplete or

deficient, or if the applicant does not meet minimum qualifications, including, but not limited to:

- (a) The applicant, if an individual, is at least eighteen years of age;
 - (b) The site registered by the applicant is located in this state;
 - (c) The applicant has no unpaid fees or fines owed to the state under the Nebraska Hemp Farming Act;
 - (d) The applicant has not had a cultivator, processor-handler, or broker license revoked in the five years preceding the date of application; or
 - (e) Any individual listed in the application for a cultivator, processor-handler, or broker license has not been convicted of a felony related to a controlled substance under either state or federal law within the preceding ten years.
- (2) If an application is incomplete or deficient, the department shall, in a timely manner, notify the applicant in writing describing the reason or reasons and request additional information. If such application is not corrected or supplemented within thirty days after the department’s request, the department shall deny the application.
- (3) Any person who intentionally and materially falsifies any information contained in an application under the Nebraska Hemp Farming Act shall be ineligible to obtain a license to operate as a cultivator, processor-handler, or broker.
- (4) A person aggrieved by the denial of a license may request a hearing pursuant to section 2-513.

Source: Laws 2019, LB657, § 7.
Operative date May 31, 2019.

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

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

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

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

Source: Laws 2019, LB657, § 8.
Operative date May 31, 2019.

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

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

Source: Laws 2019, LB657, § 9.
Operative date May 31, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

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

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

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

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

(c) Testing of samples of any hemp or hemp material;

(d) Destruction of any of the following:

(i) Hemp found to have a measured delta-9 tetrahydrocannabinol concentration greater than that allowed by the Nebraska Hemp Farming Act;

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

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

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

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

Source: Laws 2019, LB657, § 10.

Operative date May 31, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The director shall advise the Attorney General of the failure of any person to pay an administrative fine imposed under this section. The Attorney General shall bring an action in Lancaster County district court to recover the fine.

(8) Any administrative fine collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2019, LB657, § 11.

Operative date May 31, 2019.

2-512 Intentional violations of act; director; duties; ineligibility to obtain license; hearing.

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

(a) Notify the United States Attorney General;

(b) Notify the Attorney General; and

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

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

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

Source: Laws 2019, LB657, § 12.

Operative date May 31, 2019.

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

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

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

Source: Laws 2019, LB657, § 13.
Operative date May 31, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

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

(1) Hemp from each cultivation site registered with the department shall be tested for delta-9 tetrahydrocannabinol concentration prior to harvest by an approved testing facility at the licensee's expense. The results of such tests shall be certified directly to the department by the testing facility prior to harvest. The test results shall identify the location ID where the hemp was cultivated.

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

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

(4) Testing of hemp required under this section shall be conducted pursuant to standards adopted by the department using post-decarboxylation or other similarly reliable methods for the testing of delta-9 tetrahydrocannabinol concentration.

(5) Testing of hemp shall be conducted by a testing facility approved by the department.

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

(7) The entire hemp plant is not required to be submitted for testing.

(8) The test sample shall be obtained from flowering tops when flowering is occurring, shall be approximately eight inches in length, and shall consist of the fan leaf, the stalk, the flower, and, if available, the seed head.

(9) The requirements of this section shall be sufficient for both dioecious and monoecious cultivars.

(10) The approved testing facility shall provide a report giving the results of the potency analysis of each sample. For tests directed by the department, the report shall be provided to the licensee and a copy of the report shall be issued to the department. The report shall be provided before the harvest date, if applicable.

(11) When a test result is adverse, the department may require a licensee to have further tests done and may require harvesting and destruction of any plants in any portions of the site containing noncompliant plants.

Source: Laws 2019, LB657, § 14.
Operative date May 31, 2019.

2-515 Cultivator, processor-handler, or other person transporting hemp; duties; form bill of lading; department; duties; prohibited acts; peace officer; powers; violation; penalty.

(1) Any cultivator transporting hemp cultivated under the Nebraska Hemp Farming Act shall carry with the hemp being transported a copy of the cultivator license under which it was cultivated and a copy of the test results pertaining to such hemp.

(2) Any processor-handler transporting hemp processed under the Nebraska Hemp Farming Act shall carry with the hemp being transported a copy of the processor-handler license under which the hemp is being transported and a copy of the test results pertaining to such hemp.

(3) Any person other than a cultivator or processor-handler who is transporting hemp shall carry with such hemp being transported (a) a bill of lading indicating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp and (b) either a copy of the test results pertaining to such hemp or other documentation affirming that the hemp was produced in compliance with section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019.

(4)(a) The department may develop a form bill of lading for use by a person transporting hemp pursuant to subsection (3) of this section for hemp originating in this state. Such bill of lading shall, at a minimum, identify the transporting person and indicate the owner, point of origin, and destination of the hemp.

(b) The department, in consultation with the Nebraska State Patrol, may adopt and promulgate rules and regulations regulating the carrying or transporting of hemp in this state to ensure that marijuana or any other controlled substance is not disguised as hemp and carried or transported into, within, or through this state.

(c) No person shall carry or transport hemp in this state unless such hemp is:

(i) Produced in compliance with:

(A) For hemp originating in this state, the requirements of section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019, and the Nebraska Hemp Farming Act and any rules and regulations adopted and promulgated thereunder; or

(B) For hemp originating outside this state, the requirements of section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019; and

(ii) Carried or transported as provided in subsection (1), (2), or (3) of this section.

(d) No person shall transport hemp in this state concurrently with any other plant material that is not hemp.

(5)(a) A peace officer may detain any person carrying or transporting hemp in this state if such person does not provide the documentation required by this section. Unless the peace officer has probable cause to believe the hemp is, or is being carried or transported with, marijuana or any other controlled substance, the peace officer shall immediately release the hemp and the person carrying or transporting such hemp upon production of such documentation.

(b) The failure of a person detained as described in this subsection to produce documentation required by this section shall constitute probable cause to

believe the hemp may be marijuana or any other controlled substance. In such case, a peace officer may collect such hemp for testing to determine the delta-9 tetrahydrocannabinol concentration in the hemp, and, if the peace officer has probable cause to believe the person detained is carrying or transporting marijuana or any other controlled substance in violation of state or federal law, the peace officer may seize and impound the hemp or marijuana or other controlled substance and arrest such person.

(c) This subsection does not limit or restrict in any way the power of a peace officer to enforce violations of the Uniform Controlled Substances Act and federal law regulating marijuana and other controlled substances.

(6) In addition to any other penalties provided by law, including those imposed under the Nebraska Hemp Farming Act, any person who intentionally violates this section shall be guilty of a Class IV misdemeanor and fined not more than one thousand dollars.

Source: Laws 2019, LB657, § 15.
Operative date May 31, 2019.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

2-516 State plan; director; duties; contents; disapproval; amended plan; alteration or amendment authorized.

(1) No later than December 31, 2019, the director, in consultation with the Governor and the Attorney General, shall submit to the United States Secretary of Agriculture for approval a state plan by which the department shall regulate the cultivation, handling, and processing of hemp. Such state plan shall include, at a minimum:

(a) A practice to maintain relevant information regarding land on which hemp is cultivated, handled, or processed in Nebraska, including a legal description of the land, for a period of not less than three calendar years;

(b) A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration of hemp cultivated in Nebraska;

(c) A procedure for the effective destruction of hemp that is cultivated, processed, or handled in violation of the Nebraska Hemp Farming Act;

(d) A procedure to implement enforcement procedures under the act;

(e) A procedure for conducting, at a minimum, annual inspections of a random sample of hemp cultivators and processor-handlers to verify that hemp is not being cultivated, processed, or handled in violation of state or federal law;

(f) A procedure for submitting required information to the United States Department of Agriculture, as required; and

(g) A certification that the state has the resources and personnel needed to carry out the practices and procedures required by the act and federal law.

(2) If the United States Secretary of Agriculture disapproves the plan, the director, in consultation with the Governor and the Attorney General, shall submit an amended state plan to the secretary within ninety days after such disapproval.

(3) The director shall have the authority to alter or amend the state plan as required, consistent with the Nebraska Hemp Farming Act and federal law.

(4) Nothing in the Nebraska Hemp Farming Act shall be construed to be less restrictive than section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, as such section existed on January 1, 2019.

Source: Laws 2019, LB657, § 16.

Operative date May 31, 2019.

2-517 Nebraska Hemp Commission; members; qualifications; terms; quorum; expenses; powers and duties; report; contents.

(1) The Nebraska Hemp Commission is created. The commission shall consist of the following members:

(a) The dean of the University of Nebraska College of Agricultural Sciences and Natural Resources or his or her designee;

(b) One member representing postsecondary institutions other than the University of Nebraska; and

(c) Three members appointed by the Governor representing the following interests:

(i) Two Nebraska farmers with an interest in cultivating hemp; and

(ii) A manufacturer of hemp products.

(2) Members appointed pursuant to subdivisions (1)(b) and (c) of this section shall serve a term of four years and may be reappointed. A majority of the members of the commission shall constitute a quorum. The commission shall annually elect one member from among the remaining members to serve as chairperson. The commission shall meet quarterly and may meet more often upon the call of the chairperson or by request of a majority of the members. The commission shall be appointed and conduct its first meeting no later than September 1, 2019. The members of the commission shall serve without pay but shall receive expenses incurred while on official business as provided in sections 81-1174 to 81-1177.

(3) The commission shall have primary responsibility for promoting the Nebraska hemp industry and shall have the following powers and duties:

(a) To appoint and fix the salary of such support staff and employees, who shall serve at the pleasure of the commission, as may be required for the proper discharge of the functions of the commission;

(b) To prepare and approve a budget;

(c) To adopt and promulgate reasonable rules and regulations necessary to carry out this section and section 2-519;

(d) To contract for services and authorize the expenditure of funds which are necessary for the proper operation of this section and section 2-519;

(e) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to public examination by any person during normal business hours;

(f) To prohibit using any funds collected by the commission to directly or indirectly support or oppose any candidate for public office or to influence state legislation; and

(g) To establish an administrative office at such place in the state as may be suitable for the proper discharge of commission functions.

(4) The commission shall periodically report to the Governor and to the Legislature on hemp policies and practices that will result in the proper and legal growth, management, marketing, and use of the state's hemp industry. Any report submitted to the Legislature shall be submitted electronically. Such policies and practices shall, at a minimum, address the following:

- (a) Federal laws and regulatory constraints;
- (b) The economic and financial feasibility of a hemp market in Nebraska;
- (c) Nebraska businesses that may potentially utilize hemp;
- (d) Examination of research on hemp production and utilization;
- (e) The potential for globally marketing Nebraska hemp;
- (f) The feasibility of private funding for a Nebraska hemp research program;
- (g) Law enforcement concerns;
- (h) Statutory and regulatory schemes for the cultivation of hemp by private producers; and
- (i) Technical support and education about hemp.

(5) The commission is authorized to develop and coordinate programs to research and promote hemp, including, but not limited to, cultivating, handling, processing, transporting, marketing, and selling hemp.

(6) The commission shall establish such programs with the goal of securing at least twenty percent participation by small and emerging businesses in the Nebraska hemp industry, including, but not limited to, cultivating, handling, processing, transporting, marketing, and selling hemp.

Source: Laws 2019, LB657, § 17.

Operative date July 1, 2021.

2-518 Hemp Promotion Fund; established; use; investment.

The Hemp Promotion Fund is established. The fund shall be administered by the commission for the purposes set forth in section 2-517. The fund may receive appropriations by the Legislature and gifts, grants, federal funds, and any other funds both public and private. All fees collected as set forth in section 2-519 shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2019, LB657, § 18.

Operative date July 1, 2021.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-519 Fees; records; violations; penalty.

(1) For purposes of this section:

(a) Commercial channels means the sale or delivery of hemp for any use to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any hemp or hemp product;

(b) Delivered or delivery means receiving hemp for utilization or as a result of its sale in the State of Nebraska but excludes receiving hemp for storage; and

(c) First purchaser means any person, public or private corporation, association, partnership, limited liability company, or other entity buying, accepting for shipment, or otherwise acquiring hemp from a cultivator.

(2) A fee of one cent per pound is levied upon all hemp seed and a fee of one dollar per ton is levied upon all hemp fiber sold through commercial channels in Nebraska or delivered in Nebraska. Two-thirds of the fee levied under this section shall be paid by the cultivator at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. Hemp seed and hemp fiber shall not be subject to the fees imposed by this section more than once.

(3) The first purchaser, at the time of settlement with the cultivator, shall deduct the fees imposed by this section. The fees shall be deducted whether the hemp is stored in this state or any other state. The first purchaser shall maintain the necessary records of the fees for each purchase or delivery of hemp on the settlement form or check stub showing payment to the cultivator for each purchase or delivery. Such records maintained by the first purchaser shall be open for inspection during normal business hours and provide the following information:

(a) The name and address of the cultivator and first purchaser;

(b) The date of the purchase or delivery;

(c) The number of pounds of hemp seed or pounds or tons of hemp fiber purchased; and

(d) The amount of fees collected on each purchase or delivery.

(4) The first purchaser shall render and have on file with the department by the last day of January and July of each year, on forms prescribed by the commission, a statement of the number of pounds of hemp seed or pounds or tons of hemp fiber purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the commission the fees imposed by this section.

(5) All fees collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the Hemp Promotion Fund. The commission shall remit the fees collected to the State Treasurer within ten days after receipt.

(6) Any person intentionally violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 2019, LB657, § 19.

Operative date July 1, 2021.

ARTICLE 9

NOXIOUS WEED CONTROL

Section

2-958. Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

2-969. Riparian Vegetation Management Task Force; created; members.

2-958 Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

(1) A noxious weed control fund may be established for each control authority, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the control authority in carrying out its duties and responsibilities under the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) ascertain and prepare all information required by the county board in the preparation of the county budget, including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and (c) transmit such information tabulated by the control authority to the county board not later than June 1 of each year.

(2) The Noxious Weed Cash Fund is created. The fund shall consist of proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, funds credited or transferred pursuant to sections 81-201 and 81-201.05, any gifts, grants, or donations from any source, and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund may be appropriated annually for the Noxious Weed Control Act. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. Until January 1, 2020, the fund may also be used to defray all reasonable and necessary costs related to the implementation of the Nebraska Hemp Farming Act. The Department of Agriculture shall document all costs incurred for such purpose. The budget administrator of the budget division of the Department of Administrative Services may transfer a like amount from the Nebraska Hemp Program Fund to the Noxious Weed Cash Fund no later than October 1, 2022.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1965, c. 7, § 7, p. 84; Laws 1969, c. 13, § 5, p. 159; Laws 1969, c. 145, § 11, p. 675; Laws 1987, LB 1, § 4; Laws 1987, LB 138, § 8; Laws 1989, LB 49, § 10; Laws 1993, LB 588, § 35; Laws 1994, LB 1066, § 2; Laws 1996, LB 1114, § 11; Laws 1997, LB 269, § 1; Laws 2001, LB 541, § 1; Laws 2004, LB 869, § 6; Laws 2019, LB657, § 20.

Operative date May 31, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Hemp Farming Act, see section 2-501.

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

2-969 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has ever been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one surface water project representative from a river basin that has not been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is not designated as overappropriated pursuant to section

46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environment and Energy, the Department of Natural Resources, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; three representatives selected from a list of at least ten individuals nominated by the Nebraska Association of Resources Districts; two representatives selected from a list of at least five individuals nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state’s congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a nonvoting, ex officio member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture.

Source: Laws 2016, LB1038, § 3; Laws 2019, LB302, § 7.
Operative date July 1, 2019.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

(a) GENERAL PROVISIONS

Section

- 2-1501. Terms, defined.
- 2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(e) WATER PLANNING AND REVIEW PROCESS

- 2-15,100. Water planning and review; how conducted; assistance.

(a) GENERAL PROVISIONS

2-1501 Terms, defined.

As used in sections 2-1501 to 2-15,123, unless the context otherwise requires:

- (1) Commission means the Nebraska Natural Resources Commission;
- (2) State means the State of Nebraska;
- (3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;
- (4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;
- (5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;
- (6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;
- (7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;

(8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;

(9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources;

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

(13) Combined sewer overflow project means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environment and Energy.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17; Laws 2014, LB1098, § 1; Laws 2019, LB302, § 8.

Operative date July 1, 2019.

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. The commission may approve a partial allocation to a program, project, or activity based upon available unallocated funds in the Water Sustainability Fund, but the amount of unfunded allocations shall not exceed eleven million dollars. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(6) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environment and Energy, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(7) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4; Laws 2015, LB661, § 21; Laws 2016, LB957, § 1; Laws 2019, LB302, § 9.
Operative date July 1, 2019.

(e) WATER PLANNING AND REVIEW PROCESS

2-15,100 Water planning and review; how conducted; assistance.

The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environment and Energy, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB296, § 16; Laws 2019, LB302, § 10.
Operative date July 1, 2019.

ARTICLE 26

PESTICIDES

Section

- 2-2624. Terms, defined.
- 2-2626. Department; powers, functions, and duties.
- 2-2628. Registration required; when.
- 2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process or consent to jurisdiction.
- 2-2630. Label; contents; requirements.
- 2-2632. Registration; denial or change in status; grounds; procedure.
- 2-2635. Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process or consent to jurisdiction.
- 2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.
- 2-2637. Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions.
- 2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process or consent to jurisdiction.
- 2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process or consent to jurisdiction.
- 2-2640. Commercial and noncommercial applicator licenses; examination required.
- 2-2641. Private applicator; qualifications; application for license; requirements; fee.
- 2-2642. Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.
- 2-2643. Records; requirements.
- 2-2643.02. License holder; duties.
- 2-2645. Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.
- 2-2646. Prohibited acts.
- 2-2653. Duties and responsibilities of department; subject to appropriation.
- 2-2656. Nebraska aerial pesticide business license; application; form; contents; fee; resident agent or consent to jurisdiction.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or concentration is not accurately expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

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

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2019;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, including information distributed in any electronic format, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to 7 U.S.C. 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under 7 U.S.C. 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a danger, warning, symbol, or cautionary statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nematelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator or a private applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal

entity, state agency, political subdivision of the state, or postsecondary educational institution in this state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator or a private applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means any destructive, detrimental, or undesirable:

(a) Insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2019;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any restricted-use pesticide for purposes of producing any agricultural commodity on property owned, rented by, or under the general control of him or her or his or her employer, or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. To meet the definition of a private applicator, an employee of an employer described under this subdivision may only provide labor for the pesticide use. An employee who provides restricted-use pesticides or equipment used to apply restricted-use pesticides is a commercial applicator;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency or any pesticide for which an exemption under 7 U.S.C. 136p of the federal act has been granted;

(39) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(40) State pesticide applicator certification plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(41) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides established by the department pursuant to a pesticide management plan;

(42) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a pesticide used for public health purposes shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(43) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human or animal discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(44) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2; Laws 2013, LB69, § 1; Laws 2019, LB320, § 1.

Effective date September 1, 2019.

2-2626 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environment and Energy, 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 Environment and Energy 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, 2019. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environment and Energy 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 specific time, locations, and conditions restricting the use of a state-limited-use pesticide, including allowable quantities or concentrations, and may require that it be purchased or possessed only with permission or under the direct supervision of the department or its designee;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environment and Energy 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 may include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide or state-limited-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all 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. part 171, as such regulations existed on January 1, 2019; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide or use of the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide or its use is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also deter-

mine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(15) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(16) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(17) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(18) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(19) To issue a cease and desist order pursuant to section 2-2649;

(20) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(21) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(22) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7; Laws 2013, LB69, § 2; Laws 2019, LB302, § 11; Laws 2019, LB320, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB302, section 11, with LB320, section 2, to reflect all amendments.

Note: Changes made by LB302 became operative July 1, 2019. Changes made by LB320 became effective September 1, 2019.

2-2628 Registration required; when.

(1) Except as provided by subsection (2), (3), or (4) of this section, no pesticide shall be distributed in this state or delivered for transportation or transported in intrastate commerce or between points within the state through a point outside the state unless it is registered with the department pursuant to section 2-2629. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(2) Registration shall not be required for the transportation of a pesticide through the state without being unloaded or stored at any point or from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under such section.

(3) Registration shall not be required if the pesticide is distributed under the provisions of an experimental-use permit issued by the federal agency.

(4) Registration may not be required, as determined by the department, if the pesticide is not required to be registered by the federal agency.

Source: Laws 1993, LB 588, § 7; Laws 2019, LB320, § 3.
Effective date September 1, 2019.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process or consent to jurisdiction.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The trade name of the pesticide;

(c) A complete copy of all labeling to accompany the pesticide, including any web sites or other locations where electronic information about the pesticide may be found, and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant if the pesticide is not required by federal law to be registered under a use classification;

(f) Either a designation of a resident agent for service of process or a consent by the applicant to the jurisdiction of this state, for actions taken in the administration and enforcement of the Pesticide Act; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1; Laws 2013, LB69, § 3; Laws 2019, LB320, § 4.
Effective date September 1, 2019.

2-2630 Label; contents; requirements.

(1) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(a) The name, brand, or trademark under which the pesticide is distributed;

(b) The name and percentage of each active ingredient and the total percentage of inert ingredients;

(c) Directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(d) The federal agency's designated registration and establishment numbers for the pesticide;

(e) The name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(f) Numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(g) A clear display of appropriate dangers, warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(2) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(3) The label bearing the ingredient statement under subdivision (1)(b) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

(4) Any word, statement, or information required by the Pesticide Act to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary condition of use.

Source: Laws 1993, LB 588, § 9; Laws 2019, LB320, § 5.
Effective date September 1, 2019.

2-2632 Registration; denial or change in status; grounds; procedure.

(1) The department may deny an application for registration of a pesticide under the Pesticide Act or may cancel, suspend, or modify such registration if the department finds that:

(a) The composition of the pesticide does not warrant the proposed claims made for it;

(b) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the Pesticide Act; or

(c) The department has reason to believe that any use of a registered pesticide is in violation of a provision of the Pesticide Act or the federal act or is dangerous or harmful.

(2) The department shall issue written notice of its denial, cancellation, suspension, or modification and shall give such registrant or applicant an opportunity to make necessary corrections or to have a hearing pursuant to the procedure in section 2-2649.02.

(3) After an opportunity at a hearing for presentation of evidence by interested parties, the department may deny, cancel, suspend, or modify the registration of the pesticide if the department finds that:

(a) Use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(b) Use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(c) Even if properly used, the pesticide is detrimental to vegetation except weeds, to domestic animals, or to public health and safety;

(d) A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature;

(e) The registrant has not complied or the pesticide or its labeling or submitted material does not comply with a requirement of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or the federal act; or

(f) The composition of the pesticide does not warrant the proposed claims made for it.

Source: Laws 1993, LB 588, § 11; Laws 2002, LB 436, § 7; Laws 2019, LB320, § 6.

Effective date September 1, 2019.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process or consent to jurisdiction.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program; or

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the act.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8; Laws 2013, LB69, § 5; Laws 2019, LB320, § 7.
Effective date September 1, 2019.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. part 171, as the regulation existed on January 1, 2019, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) At least eighteen years of age except as provided in subsection (6) of section 2-2642;

(b) Licensed and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use; or

(c) Working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control general-use pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (4) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use general-use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (4) of section 2-2642.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2; Laws 2013, LB69, § 6; Laws 2019, LB320, § 8.

Effective date September 1, 2019.

2-2637 Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions.

(1) The department may classify commercial and noncommercial licenses under categories according to the subject, method, or place of pesticide application and establish separate testing requirements for certification and licensing in each category. All written examinations for certification shall be the property of the department. Any person taking such an examination shall return the examination to the director's authorized agent prior to leaving the examination site.

(2) The Cooperative Extension Service of the University of Nebraska (Nebraska Extension), through its county extension educators and specialists in the State of Nebraska, shall conduct training sessions on the use of restricted-use pesticides for private, commercial, and noncommercial applicators which meet the requirements for private applicator certification training established in 40 C.F.R. 171.105, and provide all trainees with thorough comprehension and knowledge on the safe use of restricted-use pesticides and general-use pesticides used by applicators required to be certified pursuant to sections 2-2636 to 2-2642. The Nebraska Extension shall schedule regular and frequent training sessions and shall issue recommendations to the director of satisfactory training for private, commercial, and noncommercial applicators completing the training.

(3) All candidates for certification or recertification shall present valid government-issued identification at training sessions and certification or recertification examinations.

Source: Laws 1993, LB 588, § 16; Laws 2002, LB 436, § 10; Laws 2019, LB320, § 9.

Effective date September 1, 2019.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process or consent to jurisdiction.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and the rules and regulations adopted and promulgated under the act and shall be a commercial applicator license holder of a license issued for the categories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control general-use pesticides on the property of another person in the State of Nebraska for hire or

compensation shall be a commercial applicator license holder, except as provided in subsection (3) of section 2-2636, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. The application shall include the applicant's date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the act.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3; Laws 2013, LB69, § 7; Laws 2019, LB320, § 10.

Effective date September 1, 2019.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process or consent to jurisdiction.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. The application shall include the applicant's date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed the applicable examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories in which the individual is licensed.

(5) The department may deny a noncommercial applicator license if it determines that the applicant:

(a) Has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) Has been unable to satisfactorily fulfill certification or licensing requirements;

(c) For any other reason is unable to fulfill the provisions of the Pesticide Act applicable to the category for which application is made;

(d) For an original noncommercial applicator license, has not passed an examination under sections 2-2637 and 2-2640; or

(e) Meets the definition of a private applicator.

(6) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the Pesticide Act.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4; Laws 2013, LB69, § 8; Laws 2019, LB320, § 11.
Effective date September 1, 2019.

2-2640 Commercial and noncommercial applicator licenses; examination required.

Each person applying for a license as a commercial or noncommercial applicator shall meet the certification requirement of passing an examination demonstrating that the person:

(1) Is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility; and

(2) Has knowledge of the use and effects of restricted-use pesticides in the categories in which the person is to be licensed.

Source: Laws 1993, LB 588, § 19; Laws 2002, LB 436, § 14; Laws 2019, LB320, § 12.
Effective date September 1, 2019.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) An individual applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. The application shall include the applicant's date of birth.

(2) All candidates for certification or recertification must present valid government-issued identification at training sessions and certification or recertification examinations.

(3) Application for an original or renewal private applicator license shall be made to the department on forms prescribed by the department and shall be accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5; Laws 2013, LB69, § 9; Laws 2019, LB320, § 13.

Effective date September 1, 2019.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for noncommercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) A noncertified applicator required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use general-use pesticides as a noncertified applicator prior to obtaining an initial license for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator meeting the requirements of 40 C.F.R. 171.201;

(c) The noncertified applicator has received training meeting the requirements of 40 C.F.R. 171.201; and

(d) The supervising certified applicator remains accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide and is able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regula-

tions. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

(5) A noncertified applicator required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use a restricted-use pesticide which is not a fumigant, sodium cyanide, or sodium fluoroacetate as a noncertified applicator prior to obtaining an initial license for only one consecutive sixty-day period of time if:

(a) The noncertified applicator complies with the requirements of subsection (4) of this section; and

(b) The noncertified applicator does not apply the restricted-use pesticides aerially.

(6) A noncertified applicator required by the Pesticide Act to be a licensed certified private applicator may apply restricted-use pesticides for the purpose of producing agricultural commodities on property owned or rented by his or her immediate family for one consecutive twenty-four-month period if:

(a) The noncertified applicator is at least sixteen years of age and working under the direct supervision of a licensed private applicator who is an immediate family member;

(b) The noncertified applicator has received training through a training session meeting the requirements of 40 C.F.R. 171.201; and

(c) The supervising certified applicator is in compliance with the requirements of 40 C.F.R. 171.201.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16; Laws 2013, LB69, § 10; Laws 2019, LB320, § 14.
Effective date September 1, 2019.

2-2643 Records; requirements.

(1) All applicators applying restricted-use pesticides are required to maintain records of the use of all restricted-use pesticides. Licensed certified applicators who supervise noncertified applicators are required to document and maintain or verify the existence of and have access to the records required to be maintained by 40 C.F.R. 171.201. The department may by rules and regulations prescribe the information to be included in the records.

(2) The department may require a license holder to keep records of the licensee's use of general-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(3) The license holder shall keep records required under this section for a period of three years from the date of the pesticide use.

(4) The license holder shall provide the department access to such records and a copy of any requested record pertaining to the use of pesticides.

Source: Laws 1993, LB 588, § 22; Laws 2002, LB 436, § 17; Laws 2019, LB320, § 15.
Effective date September 1, 2019.

2-2643.02 License holder; duties.

A license holder shall comply with the Pesticide Act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. A license holder shall not interfere with the department in the performance of its duties. A license holder acting as a supervisor to a noncertified applicator is required to comply with the requirements of subsections (4), (5), and (6) of section 2-2642.

Source: Laws 2002, LB 436, § 19; Laws 2019, LB320, § 16.
Effective date September 1, 2019.

2-2645 Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.

(1) A person claiming damages from a pesticide use may file with the department a written report claiming that the person has been damaged. The report shall be filed as soon as possible following the day of the alleged occurrence.

(2) Except as otherwise provided in the Pesticide Act, upon receipt of a report if the department has reasonable cause to believe that a violation of the act has occurred, it shall investigate such report to determine if any violation has occurred and if any enforcement action shall be taken under the act. The department is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the incident or damages, is outside the scope of the Pesticide Act, or is determined by the department to involve a matter which is frivolous, minor, or insignificant under the intent of the act. If a complaint is investigated, the department shall notify the licensee, owner, or lessee of the property on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person upon receiving a written request. Nothing in this subsection shall be construed to require the department to take enforcement action in any matter.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to inspect, within reasonable hours, the property alleged to have been damaged. If the claimant refuses to permit the department to inspect the property alleged to have been damaged, or fails to provide additional information regarding the allegation when requested by the department, the department may decline to investigate the claim.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report or cooperate with the department and is the only person claiming injury from the particular use of a pesticide, the department may, if in the public interest, refuse to take action or hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

Source: Laws 1993, LB 588, § 24; Laws 2002, LB 436, § 23; Laws 2009, LB100, § 6; Laws 2019, LB320, § 17.
Effective date September 1, 2019.

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 pre-construction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer or water when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, advertise, recommend, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and fines as prescribed by an order of the director, the act, and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not

be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7; Laws 2010, LB254, § 8; Laws 2013, LB69, § 11; Laws 2019, LB320, § 18.

Effective date September 1, 2019.

Cross References

Environmental Protection Act, see section 81-1532.

2-2653 Duties and responsibilities of department; subject to appropriation.

Notwithstanding any other provision of the Pesticide Act, the duties and responsibilities of the department under the act shall be subject to adequate federal, cash, and general funding appropriation being made by the Legislature. If adequate funds are not made available under the act, the department shall submit a revised state pesticide applicator certification plan to the federal agency outlining the current program.

Source: Laws 1993, LB 588, § 32; Laws 2019, LB320, § 19.

Effective date September 1, 2019.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent or consent to jurisdiction.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department before commencement of application of pesticides. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the Pesticide Act.

Source: Laws 2010, LB254, § 3; Laws 2013, LB69, § 13; Laws 2019, LB320, § 20.

Effective date September 1, 2019.

ARTICLE 32

NATURAL RESOURCES

Section

2-3226.14. Flood protection and water quality enhancement bonds; authority to issue; termination.

2-3241. Districts; additional powers.

2-3226.14 Flood protection and water quality enhancement bonds; authority to issue; termination.

The authority to issue bonds for qualified projects granted in section 2-3226.10 terminates on December 31, 2024, except that (1) any bonds already issued and outstanding for qualified projects as of such date are permitted to remain outstanding and the district shall retain all powers of taxation provided for in section 2-3226.10 to provide for the payment of principal and interest on such bonds and (2) refunding bonds may continue to be issued and outstanding as of December 31, 2024, including extension of principal maturities if determined appropriate.

Source: Laws 2009, LB160, § 5; Laws 2019, LB177, § 1.

Effective date September 1, 2019.

2-3241 Districts; additional powers.

Each district shall have the power and authority to provide technical and other assistance as may be necessary or desirable in rural areas to abate the lowering of water quality in the state caused by sedimentation, effluent from feedlots, and runoff from cropland areas containing agricultural chemicals.

Such assistance shall be coordinated with the programs and the stream quality standards as established by the Department of Environment and Energy.

Source: Laws 1969, c. 9, § 41, p. 126; Laws 1972, LB 1045, § 2; Laws 1972, LB 543, § 13; Laws 1993, LB 3, § 3; Laws 2019, LB302, § 12.

Operative date July 1, 2019.

ARTICLE 39

MILK

(d) NEBRASKA MILK ACT

Section

2-3965. Act, how cited; provisions adopted by reference; copies.

2-3966. Terms, defined.

2-3982. Classification for sediment content; sediment standards; determination; effect.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2017 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Shippers, 2017 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2017 Revision; and

(d) Evaluation of Milk Laboratories, 2017 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2017 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted;

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph DD.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture. The copies filed with the Clerk of the Legislature shall be filed electronically.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1; Laws 2013, LB67, § 1; Laws 2013, LB222, § 2; Laws 2019, LB333, § 1.

Effective date September 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

For purposes of the Nebraska Milk Act, unless the context otherwise requires:

(1) 3-A Sanitary Standards has the same meaning as in the Grade A Pasteurized Milk Ordinance;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2; Laws 2019, LB333, § 2.
Effective date September 1, 2019.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2018.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18; Laws 2013, LB67, § 8; Laws 2019, LB333, § 3.
Effective date September 1, 2019.

ARTICLE 40

GRAIN SORGHUM DEVELOPMENT

Section

- 2-4018. Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.
 2-4021. Grain Sorghum National Checkoff Fund; created; use; investment.

2-4018 Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.

The State Treasurer shall establish in the state treasury a fund to be known as the Grain Sorghum Development, Utilization, and Marketing Fund, to which shall be credited (1) all fees collected by the board pursuant to the Grain Sorghum Resources Act and (2) any repayments relating to the fund, including license fees or royalties, which shall be credited to the fund for the uses and purposes of the act and its enforcement. Such fund shall be expended solely for the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1981, LB 11, § 18; Laws 1995, LB 7, § 24; Laws 2019, LB298, § 12.
 Effective date May 28, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-4021 Grain Sorghum National Checkoff Fund; created; use; investment.

The Grain Sorghum National Checkoff Fund is created. The fund shall be administered by the Grain Sorghum Development, Utilization, and Marketing Board. All sums of money received from the United Sorghum Checkoff Program shall be deposited in the fund. The board shall expend the fund to conduct state-specific programs for research, information, and promotion related to grain sorghum. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2019, LB298, § 23.
 Effective date May 28, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 42

CONSERVATION CORPORATION

Section

- 2-4215. Coordinate activities with state and natural resources districts.

2-4215 Coordinate activities with state and natural resources districts.

In exercising any powers granted by the Conservation Corporation Act, the corporation shall coordinate its activities with the land and water resources

policies, programs, and planning efforts of the state, particularly the Department of Environment and Energy and the Department of Natural Resources, and with the several natural resources districts throughout the state.

Source: Laws 1981, LB 385, § 15; Laws 1993, LB 3, § 4; Laws 2000, LB 900, § 62; Laws 2019, LB302, § 13.
Operative date July 1, 2019.

ARTICLE 44

NEBRASKA RIGHT TO FARM ACT

Section

- 2-4403. Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when; suit; limitation.
2-4404. Applicability of other statutes.

2-4403 Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when; suit; limitation.

(1) A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance.

(2) No suit shall be maintained against a farm or farm operation or public grain warehouse or public grain warehouse operation for public or private nuisance more than two years after the condition which is the subject matter of the suit reaches a level of offense sufficient to sustain a claim of nuisance.

(3) The limitation provided for in this section shall not apply to any action brought to determine compliance with or to enforce a previous order of a court related to the same claim of nuisance or to any claims for additional damages or equitable relief available when a farm or farm operation or public grain warehouse or public grain warehouse operation fails to remediate a nuisance pursuant to such court order.

Source: Laws 1982, LB 668, § 3; Laws 1998, LB 1193, § 7; Laws 2019, LB227, § 1.
Effective date September 1, 2019.

2-4404 Applicability of other statutes.

The Nebraska Right to Farm Act shall not affect the application of state and federal statutes.

Source: Laws 1982, LB 668, § 4; Laws 2019, LB227, § 2.
Effective date September 1, 2019.

ARTICLE 46

EROSION AND SEDIMENT CONTROL

Section

- 2-4604. State program; director; duties; program contents; revisions; hearings.

2-4604 State program; director; duties; program contents; revisions; hearings.

(1) The director shall, in cooperation with the commission, the Department of Environment and Energy, the Natural Resources Conservation Service of the United States Department of Agriculture, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

- (a) The soil-loss tolerance level for the various types of soils in the state;
- (b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss tolerance level;
- (c) Guidelines for establishing priorities for implementation of the program at the state and local levels;
- (d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and
- (e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program may be revised by the director and the commission at any time. Before approving any such changes, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2; Laws 2019, LB302, § 14.
Operative date July 1, 2019.

ARTICLE 57
INDUSTRIAL HEMP

Section

2-5701. Postsecondary institution or Department of Agriculture; industrial hemp; cultivated for purposes of research; sites; certification; licensing agreements; activities authorized; fees; report; hearing.

2-5701 Postsecondary institution or Department of Agriculture; industrial hemp; cultivated for purposes of research; sites; certification; licensing agreements; activities authorized; fees; report; hearing.

(1) A postsecondary institution in this state or the Department of Agriculture may cultivate industrial hemp if the industrial hemp is cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

(2) Sites used for cultivating industrial hemp must be certified by, and registered with, the Department of Agriculture.

(3)(a) Prior to approval by the United States Secretary of Agriculture of the state plan as provided in section 2-516, a person with a valid licensing

agreement with the department pursuant to this section may cultivate, handle, or process industrial hemp as a part of the department's agricultural pilot program. Qualified applicants shall be selected at random by the department. To be qualified to apply and to retain a valid licensing agreement, a cultivator or processor-handler shall comply with all applicable requirements set forth in the Nebraska Hemp Farming Act, except that a licensing agreement shall be required in lieu of any license requirements under the act.

(b) A cultivator or processor-handler shall pay the license application fee, site registration fee, and site modification fee, if applicable, established in section 2-508 for each one-year licensing agreement and shall be required to submit a report for department research purposes. The report shall be submitted as required by the department. All fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Nebraska Hemp Program Fund.

(c) Licensing agreements shall establish procedures for sampling and testing of industrial hemp, effective destruction of noncompliant industrial hemp, and department inspections to monitor compliance with the agreements.

(d) A cultivator or processor-handler who has had a licensing agreement terminated for failure to comply with the agreement or the Nebraska Hemp Farming Act, or any rules or regulations adopted and promulgated under the act, may request a hearing as set forth in section 2-513.

(e) The Department of Agriculture may adopt and promulgate rules and regulations as necessary to carry out this section.

(4) For purposes of this section:

(a) Agricultural pilot program means a pilot program to study the cultivation or marketing of industrial hemp;

(b) Cultivate and cultivator have the same meaning as in section 2-503;

(c) Handle has the same meaning as in section 2-503;

(d) Industrial hemp means hemp as defined in section 2-503;

(e) Postsecondary institution has the same meaning as in section 2-503; and

(f) Process and processor-handler have the same meaning as in section 2-503.

Source: Laws 2014, LB1001, § 1; Laws 2019, LB657, § 21.

Operative date May 31, 2019.

Cross References

Nebraska Hemp Farming Act, see section 2-501.



CHAPTER 3 AERONAUTICS

Article.

1. General Provisions. 3-104 to 3-158.

ARTICLE 1

GENERAL PROVISIONS

Section

- 3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.
- 3-150. Aircraft fuel tax; repayment; fuel used for air school purposes.
- 3-158. Person renting aircraft; insurance information; notice.

3-104 Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; compensation; duties.

(1) There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission.

(2) The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the division but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, the commission may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

(3)(a) Until December 31, 2017, it shall be the duty of the commission to advise the Governor relative to the appointment of the Director of Aeronautics, and the commission shall report to the Governor whenever it feels that the Director of Aeronautics is not properly fulfilling his or her duties.

(b) Beginning January 1, 2018, the commission shall advise the Director-State Engineer relative to the appointment of the Director of Aeronautics, and the commission shall report to the Director-State Engineer whenever the commission feels that the Director of Aeronautics is not properly fulfilling his or her duties. The commission shall also advise the Governor on the general status and state of aviation in Nebraska.

(c) The commission shall further act in an advisory capacity to the Director of Aeronautics and Director-State Engineer.

(4) The commission shall have, in addition, the following specific duties: (a) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (b) to designate the locations and approve sites of airports; (c) to arrange and authorize the purchase of aircraft upon behalf of the state; (d) to select and approve pilots to be employed by the state, if any; and (e) to assist the Director of Aeronautics in formulating the regulations and policies to be carried out by the division under the terms of the State Aeronautics Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the division. The director may designate one or more members of the commission to represent the division in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1; Laws 2017, LB339, § 4; Laws 2019, LB190, § 1.
Effective date September 1, 2019.

3-150 Aircraft fuel tax; repayment; fuel used for air school purposes.

Any person, firm, partnership, limited liability company, company, agency, corporation, body politic, municipality, or National Guard or reserve officer of the United States Army who buys and uses aircraft fuel meeting the specifications set by the Department of Revenue, bought for and used only in aircraft in connection with any air school approved by the federal government, on which the tax has been paid or which is chargeable under section 3-148 and who consumes the same for purposes of operating or propelling aircraft used strictly for air school purposes shall be reimbursed the amount of tax so paid in the manner and subject to the conditions provided in this section and section 3-151.

Source: Laws 1945, c. 5, § 15, p. 100; Laws 1976, LB 460, § 7; Laws 1991, LB 627, § 3; Laws 1993, LB 121, § 83; Laws 2019, LB512, § 1.
Operative date May 31, 2019.

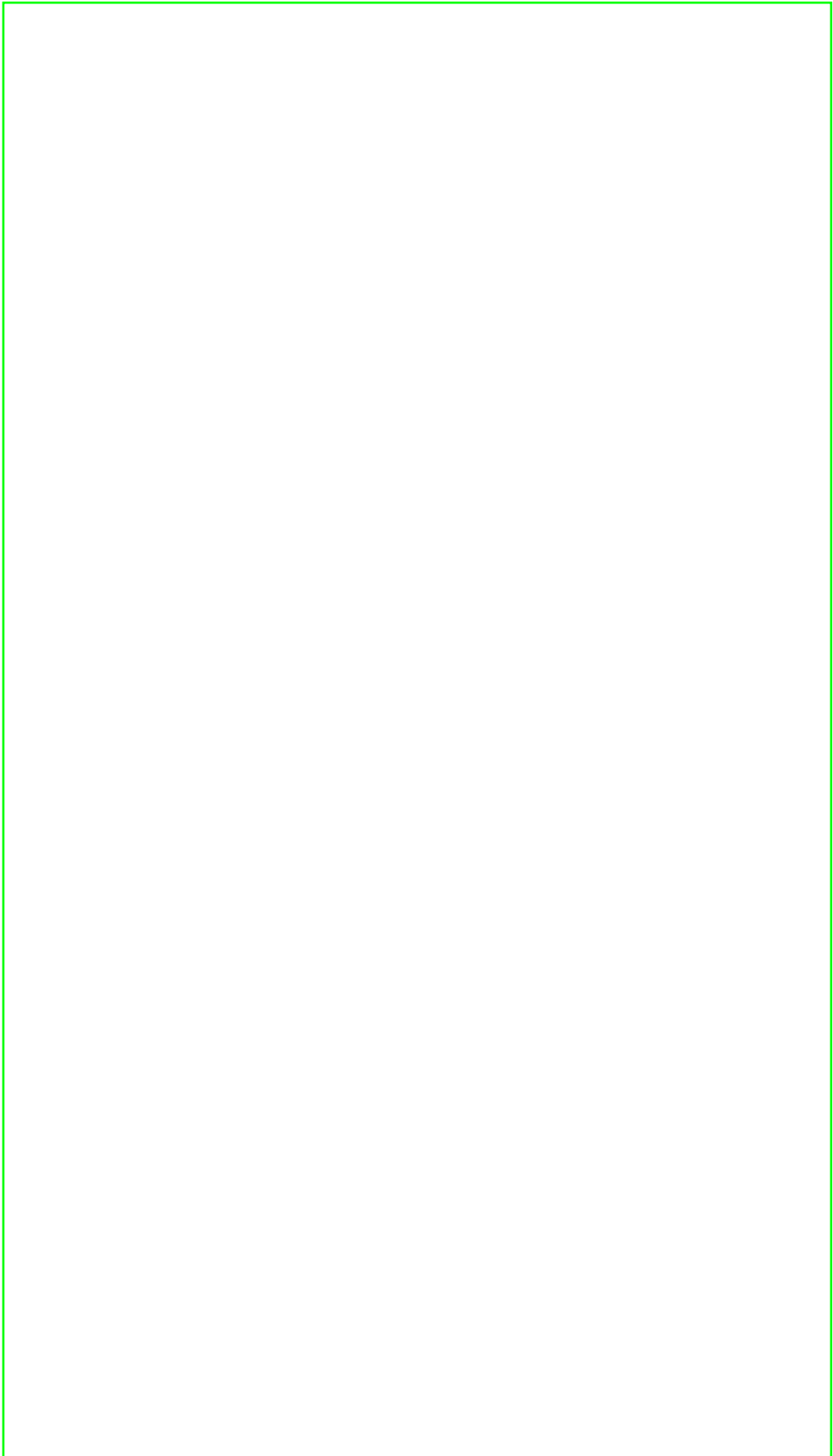
3-158 Person renting aircraft; insurance information; notice.

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership,

maintenance, or use of the aircraft. The notice shall contain the name of the person giving the notice.

Source: Laws 1986, LB 781, § 1; Laws 2017, LB339, § 48; Laws 2019, LB190, § 2.

Effective date September 1, 2019.



CHAPTER 8

BANKS AND BANKING

Article.

1. General Provisions. 8-135 to 8-1,140.
2. Trust Companies. 8-205 to 8-218.
3. Building and Loan Associations. 8-318 to 8-355.
6. Assessments and Fees. 8-602.
11. Securities Act of Nebraska. 8-1101 to 8-1111.
17. Commodity Code. 8-1704 to 8-1726.
27. Nebraska Money Transmitters Act. 8-2737.

ARTICLE 1

GENERAL PROVISIONS

Section

- 8-135. Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.
- 8-143.01. Extension of credit; limits; written report; credit report; violation; penalty; powers of director.
- 8-157.01. Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.
- 8-167.01. Banks; publication requirements not applicable; when.
- 8-183.04. State or federal savings association; mutual savings association; retention of mutual form authorized.
- 8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-135 Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) All persons, individually or with others and regardless of age, may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of the agreement.

(3) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed on January 1, 2019, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3; Laws 2016, LB760, § 1; Laws 2017, LB140, § 33; Laws 2018, LB812, § 1; Laws 2019, LB258, § 1.
Effective date March 8, 2019.

8-143.01 Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation existed on January 1, 2019.

(8) For purposes of this section:

(a) Executive officer means a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer includes the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus means the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

(10) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out this section, including rules and regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O as such section and regulation existed on January 1, 2019.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5; Laws 2017, LB140, § 40; Laws 2018, LB812, § 2; Laws 2019, LB258, § 2.
Effective date March 8, 2019.

8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public,

may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a)(i) All automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transactions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely based upon the fees established by the switches, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, or (v) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iii) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.

(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2019. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises.

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Annually by September 1, any entity operating as a switch in Nebraska shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) Any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

(9) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(10) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made

on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14) Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a

personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2; Laws 2017, LB140, § 56; Laws 2018, LB812, § 3; Laws 2019, LB258, § 3; Laws 2019, LB603, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB258, section 3, with LB603, section 1, to reflect all amendments.

Note: Changes made by LB258 became effective March 8, 2019. Changes made by LB603 became effective September 1, 2019.

8-167.01 Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350, as such part existed on January 1, 2019.

Source: Laws 1995, LB 384, § 18; Laws 2013, LB213, § 4; Laws 2017, LB140, § 65; Laws 2018, LB812, § 4; Laws 2019, LB258, § 4.
Effective date March 8, 2019.

8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.

(1) Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank.

(2) All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association.

(3) The amount and type of capital required for such a converted savings association shall be as required for federal mutual savings associations in 12 C.F.R. 5.21, as such regulation existed on January 1, 2019, except that if at any time the department determines that the capital of such a converted savings association is impaired, the director may require the members to make up the capital impairment.

(4) The director may adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Source: Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10; Laws 2010, LB890, § 5; Laws 2017, LB140, § 79; Laws 2018, LB812, § 5; Laws 2019, LB258, § 5.
Effective date March 8, 2019.

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, 2019, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall

not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1; Laws 2017, LB140, § 130; Laws 2018, LB812, § 6; Laws 2019, LB258, § 6.

Effective date March 8, 2019.

ARTICLE 2

TRUST COMPANIES

Section

- 8-205. Capital stock; amount required; exception; impairment of capital stock; department; powers.
 8-209. Pledge of securities with Department of Banking and Finance; amount required.
 8-218. Examination; powers and duties of Department of Banking and Finance.

8-205 Capital stock; amount required; exception; impairment of capital stock; department; powers.

(1) No corporation, except a bank authorized by the Director of Banking and Finance to operate a trust department, shall be authorized to transact business as a trust company under the Nebraska Trust Company Act on or after August 1, 2000, unless it has capital stock of at least five hundred thousand dollars, all of which shall be fully paid up in cash before the corporation is authorized to commence business.

(2)(a) Corporations, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, shall, on or after such date, maintain a capital stock of at least two hundred thousand dollars in cities of at least one hundred thousand or more inhabitants, one hundred thousand dollars in cities of at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, fifty thousand dollars in cities of at least ten thousand inhabitants but fewer than fifty thousand inhabitants, and twenty-five thousand dollars in cities and villages of fewer than ten thousand inhabitants. The population of a city for purposes of this subsection shall be the population as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of subsection (1) of this section, shall be subject to the capital stock requirement of subsection (1) of this section and shall maintain a capital stock of at least the minimum amount required by subsection (1) of this section.

(c) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August

1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of a corporation located in a larger city pursuant to subdivision (2)(a) of this section, shall be subject to the capital stock requirement of such a corporation located in a larger city pursuant to subdivision (2)(a) of this section and shall maintain a capital stock of at least the minimum amount required for such a corporation located in a larger city pursuant to subdivision (2)(a) of this section.

(d) A capital stock requirement once attained by a corporation pursuant to either this subsection or subsection (1) of this section shall not be reduced.

(3) If at any time the department determines that the capital stock of a trust company is impaired, it may require the shareholders of the trust company to make up the capital stock impairment.

Source: Laws 1911, c. 31, § 5, p. 188; R.S.1913, § 742; Laws 1919, c. 190, tit. V, art. XVIII, § 5, p. 719; C.S.1922, § 8067; C.S.1929, § 8-205; R.S.1943, § 8-205; Laws 1959, c. 19, § 5, p. 144; Laws 1961, c. 14, § 8, p. 109; Laws 1993, LB 81, § 18; Laws 1998, LB 1321, § 36; Laws 2000, LB 932, § 5; Laws 2019, LB67, § 1. Effective date September 1, 2019.

8-209 Pledge of securities with Department of Banking and Finance; amount required.

(1) Any corporation organized to do business as a trust company under the Nebraska Trust Company Act shall make a pledge with the Department of Banking and Finance of approved securities.

(2) The amount of securities required to be pledged shall be based on the market value of trust assets held by the trust company as follows:

(a) Trust companies with trust assets with a market value of less than twenty-five million dollars shall pledge securities in the amount of one hundred thousand dollars in par value;

(b) Trust companies with trust assets with a market value of at least twenty-five million dollars but less than two hundred fifty million dollars shall pledge securities in the amount of two hundred thousand dollars in par value;

(c) Trust companies with trust assets with a market value of at least two hundred fifty million dollars but less than two billion five hundred million dollars shall pledge securities in the amount of three hundred thousand dollars in par value;

(d) Trust companies with trust assets with a market value of at least two billion five hundred million dollars but less than five billion dollars shall pledge securities in the amount of four hundred thousand dollars in par value; and

(e) Trust companies with trust assets with a market value of five billion dollars or more shall pledge securities in the amount of five hundred thousand dollars in par value.

(3) A trust company shall determine the market value of its trust assets at the end of each calendar year. If such valuation shows that the pledge of securities is less than is required by subsection (2) of this section, the trust company shall increase the amount of the securities pledged with the department within sixty days following the end of the calendar year.

(4) If at any time the market value of pledged assets is determined to have depreciated to less than ninety percent of par value or the trust company has trust funds deposited with itself or its supporting commercial bank in excess of those deposits referred to by section 8-212, the Director of Banking and Finance may require additional pledges in amounts deemed necessary to fully secure pledging requirements or excessive trust fund depository balances.

(5) Any national bank authorized by the Office of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System to act in a fiduciary capacity in this state, any out-of-state bank authorized by its home state regulator to act in a fiduciary capacity in this state, any federal savings association authorized by the Office of the Comptroller of the Currency to act in a fiduciary capacity in this state, any federally chartered trust company, any out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and any out-of-state entity acting in a fiduciary capacity in this state shall make similar pledges with the department, and all such deposits held by the department shall be considered as having been lawfully so pledged and subject to the Nebraska Trust Company Act.

Source: Laws 1911, c. 31, § 9, p. 192; R.S.1913, § 746; Laws 1919, c. 190, tit. V, art. XVIII, § 9, p. 721; C.S.1922, § 8071; C.S.1929, § 8-209; Laws 1933, c. 18, § 75, p. 174; Laws 1939, c. 3, § 1, p. 59; C.S.Supp.,1941, § 8-209; R.S.1943, § 8-209; Laws 1993, LB 81, § 23; Laws 1998, LB 1321, § 39; Laws 2009, LB327, § 7; Laws 2012, LB963, § 5; Laws 2019, LB258, § 7.
Effective date March 8, 2019.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-218 Examination; powers and duties of Department of Banking and Finance.

The Department of Banking and Finance or any duly appointed examiner authorized by it may make a full examination into all the books, papers, and affairs of any trust company doing business under the Nebraska Trust Company Act as often as deemed necessary. In so doing, the department shall have power to administer oaths and affirmations and to examine on oath or affirmation the officers, agents, and clerks of the trust company, touching the matter which they may be authorized to inquire into and examine, and to summon and by subpoena compel the attendance of any person or persons in this state to testify under oath in relation to the affairs of the trust company. In lieu of any examination authorized by the laws of this state, the Director of Banking and Finance may accept, in his or her discretion, a report of an examination made of a trust company by the Federal Deposit Insurance Corporation, the Federal Reserve Bank, or the Office of the Comptroller of the Currency or he or she may examine any such trust company jointly with any such federal agency.

Source: Laws 1911, c. 31, § 9, p. 193; R.S.1913, § 747; Laws 1919, c. 190, tit. V, art. XVIII, § 15, p. 722; C.S.1922, § 8077; Laws 1927, c. 35, § 3, p. 162; Laws 1929, c. 38, § 6, p. 158; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 176; C.S.Supp.,1941, § 8-215; R.S.

1943, § 8-218; Laws 1993, LB 81, § 32; Laws 1998, LB 1321, § 45; Laws 2019, LB258, § 8.

Effective date March 8, 2019.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section

8-318. Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

8-346. Books; examination.

8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on January 1, 2019, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or

additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3; Laws 2017, LB140, § 133; Laws 2018, LB812, § 7; Laws 2019, LB258, § 9.
Effective date March 8, 2019.

8-346 Books; examination.

(1) The Director of Banking and Finance, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, records, business, and affairs of every building and loan association organized under the laws of this state as often as deemed necessary. The director may accept in his or her discretion, in lieu of any examination authorized by the laws of this state, a report of an examination made of a building and loan association by the Federal Deposit Insurance Corporation, or the director may examine any such association with that federal agency.

(2) The director may, at his or her discretion, make available to the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency copies of reports of any such examination or any information furnished to or

obtained by him or her in such examination. The rights, powers, duties, and privileges of the director, his or her deputy, or any duly appointed examiner in connection with such examinations shall be the same as is or may be provided by law in reference to the examinations of banks.

Source: Laws 1935, c. 13, § 1, p. 82; C.S.Supp.,1941, § 8-331; R.S.1943, § 8-346; Laws 1953, c. 12, § 1, p. 78; Laws 1992, LB 757, § 8; Laws 2000, LB 932, § 15; Laws 2019, LB258, § 10.
Effective date March 8, 2019.

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, 2019, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9; Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2; Laws 2017, LB140, § 134; Laws 2018, LB812, § 8; Laws 2019, LB258, § 11.
Effective date March 8, 2019.

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, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license;

(5) For affixing certificate and seal, five dollars;

(6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(7) For issuing a certificate of approval to a credit union, ten dollars;

(8) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

(10) 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;

(11) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(12) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(13) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(14) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(15) For investigating an application for a merger of two state banks, a merger of a state bank and a national bank in which the state bank is the surviving entity, or an interstate merger application in which the Nebraska state chartered bank is the resulting bank, five hundred dollars;

(16) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(17) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(18) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(19) For investigating an applicant under section 8-1513, five thousand dollars; and

(20) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50; Laws 2017, LB140, § 136; Laws 2019, LB258, § 12.

Effective date March 8, 2019.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section

8-1101. Terms, defined.

8-1101.01. Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.

8-1103. Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.

8-1108.02. Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

8-1111. Transactions exempt from registration.

8-1101 Terms, defined.

For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing

employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5)(a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and (iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is registered under section 203 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations under the act;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or

writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser or is excluded from the definition of investment adviser under section 202 of the Investment Adviser Act of 1940, or (i) such other persons not within the intent of this subdivision as the director may by rule and regulation or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and

(b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the acts as they existed on January 1, 2019;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company. For the limited purposes of determining professional mal-

practice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1; Laws 2017, LB148, § 1; Laws 2019, LB259, § 1.

Effective date March 8, 2019.

Cross References

Viatical Settlements Act, see section 44-1101.

8-1101.01 Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933, defined.

For purposes of the Securities Act of Nebraska, federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2019.

Source: Laws 2017, LB148, § 2; Laws 2019, LB259, § 2.

Effective date March 8, 2019.

8-1103 Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered.

The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and payment of the fee prescribed in subsection (6) of this section prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited

liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the department. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety or signature bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section

222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule and regulation or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule and regulation or order may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director may prescribe by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so

required shall be preserved for such period as the director may prescribe by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska;

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit; or

(xiii) Has refused to allow or otherwise impedes the department from conducting an examination under subsection (7) of this section or has refused the department access to a registrant's office to conduct an examination under subsection (7) of this section.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of this section, the director may, by rule and regulation or order, determine that a violation of any provision of the fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission, in effect on January 1, 2019, constitutes a dishonest or unethical practice in the securities or commodities business.

(ii) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(iii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(10)(a) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(b) If an applicant for registration does not complete the registration application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the registration application as abandoned and may

issue a notice of abandonment of the registration application to the applicant in lieu of proceedings to deny the application.

(c) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Source: Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23; Laws 2017, LB148, § 4; Laws 2019, LB259, § 3.
Effective date March 8, 2019.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2)(a) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(F) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer and may

require that such filing be made no later than fifteen days after the first sale of such federal covered security in this state.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer is required to file with the Securities and Exchange Commission.

(3) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(4) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(5) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(6) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of the following, so long as no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer:

(a) A federal covered security under section 18(b)(4)(F) of the Securities Act of 1933; or

(b) A federal covered security under section 18(b)(3) of the Securities Act of 1933 which is exempt from federal registration pursuant to Tier 2 of federal Regulation A, 17 C.F.R. 230.251(a).

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4; Laws 2015, LB252, § 2; Laws 2016, LB771, § 2; Laws 2019, LB259, § 4. Effective date March 8, 2019.

8-1111 Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable.

The director may by order deny or revoke the exemption specified in subdivision (a) or (b) of subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that such order has been entered and the reasons for such order and that within fifteen business days after receipt of a written

request the matter will be set for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director shall, after notice of and opportunity for hearing to all interested persons, enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order shall operate retroactively. No person may be considered to have violated the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule and regulation or order require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as such act existed on January 1, 2019;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8)(a) Any offer or sale to any of the following, whether the purchaser is acting for itself or in some fiduciary capacity:

(i) A bank, savings institution, credit union, trust company, or other financial institution;

(ii) An insurance company;

(iii) An investment company as defined in the Investment Company Act of 1940;

(iv) A pension or profit-sharing trust;

(v) A broker-dealer;

(vi) A corporation with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(vii) A Massachusetts or similar business trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(viii) A partnership with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(ix) A trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;

(x) Any entity in which all of the equity owners are individuals who are individual accredited investors as defined in subdivision (b) of this subdivision;

(xi) An institutional buyer as may be defined by the director by rule and regulation or order; or

(xii) An individual accredited investor.

(b) For purposes of subdivision (8)(a) of this section, individual accredited investor means (i) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (ii) any manager of a limited liability company that is the issuer of the securities being offered or sold, (iii) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (iv) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for

soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by a cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in

order to make a reasonably informed judgment with respect to such investment;

(17) Any security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer. This subdivision shall apply to offers and sales to the following individuals:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the

transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule and regulation or order of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule and regulation or order of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser

receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the department before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed seven hundred fifty thousand dollars or such greater amount as from time to time may be set in accordance with rules and regulations adopted and promulgated by the director to adjust the amount to reflect changes in the Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics, and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the department a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933, or complies with Rule 147A adopted under the Securities Act of 1933;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the department on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, an entity that would be an investment company but for the exclusions provided in

section 3(c) of the Investment Company Act of 1940, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the

offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the department by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the director, by rule and regulation or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the department within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the department as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the department, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit web site access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the department and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet web site that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) Individual accredited investor means (A) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (B) any manager of a limited liability company that is the issuer of the securities being offered or sold, (C) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (D) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the department as required by this subdivision.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013,

LB205, § 2; Laws 2013, LB214, § 6; Laws 2015, LB226, § 1; Laws 2017, LB148, § 13; Laws 2019, LB259, § 5.
Effective date March 8, 2019.

Cross References

Nebraska Limited Cooperative Association Act, see section 21-2901.

ARTICLE 17
COMMODITY CODE

Section

- 8-1704. CFTC rule, defined.
8-1707. Commodity Exchange Act, defined.
8-1726. Violations of code; director; powers.

8-1704 CFTC rule, defined.

CFTC rule shall mean any rule, regulation, or order of the Commodity Futures Trading Commission in effect on January 1, 2019.

Source: Laws 1987, LB 575, § 4; Laws 1993, LB 283, § 2; Laws 2011, LB76, § 4; Laws 2019, LB259, § 6.
Effective date March 8, 2019.

8-1707 Commodity Exchange Act, defined.

Commodity Exchange Act shall mean the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2019.

Source: Laws 1987, LB 575, § 7; Laws 1993, LB 283, § 5; Laws 2011, LB76, § 5; Laws 2019, LB259, § 7.
Effective date March 8, 2019.

8-1726 Violations of code; director; powers.

(1) If the director believes, whether or not based upon an investigation conducted under section 8-1725, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Commodity Code or any rule, regulation, or order under the code, the director may:

(a) Issue a cease and desist order;

(b) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(2) The director may institute any of the following actions in the appropriate district court of this state or in the appropriate courts of another state in addition to any legal or equitable remedies otherwise available:

(a) An action for a declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with the Commodity Code or any rule, regulation, or order of the director;

(c) An action for disgorgement or restitution; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3)(a) The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) If a person fails to pay the administrative fine or investigation costs referred to in this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the code.

Source: Laws 1987, LB 575, § 26; Laws 1993, LB 283, § 9; Laws 2019, LB259, § 8.
Effective date March 8, 2019.

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section
8-2737. Examination of licensee; notice; director; powers; charge.

8-2737 Examination of licensee; notice; director; powers; charge.

(1) The director may conduct an examination of a licensee upon reasonable written notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with the Nebraska Money Transmitters Act.

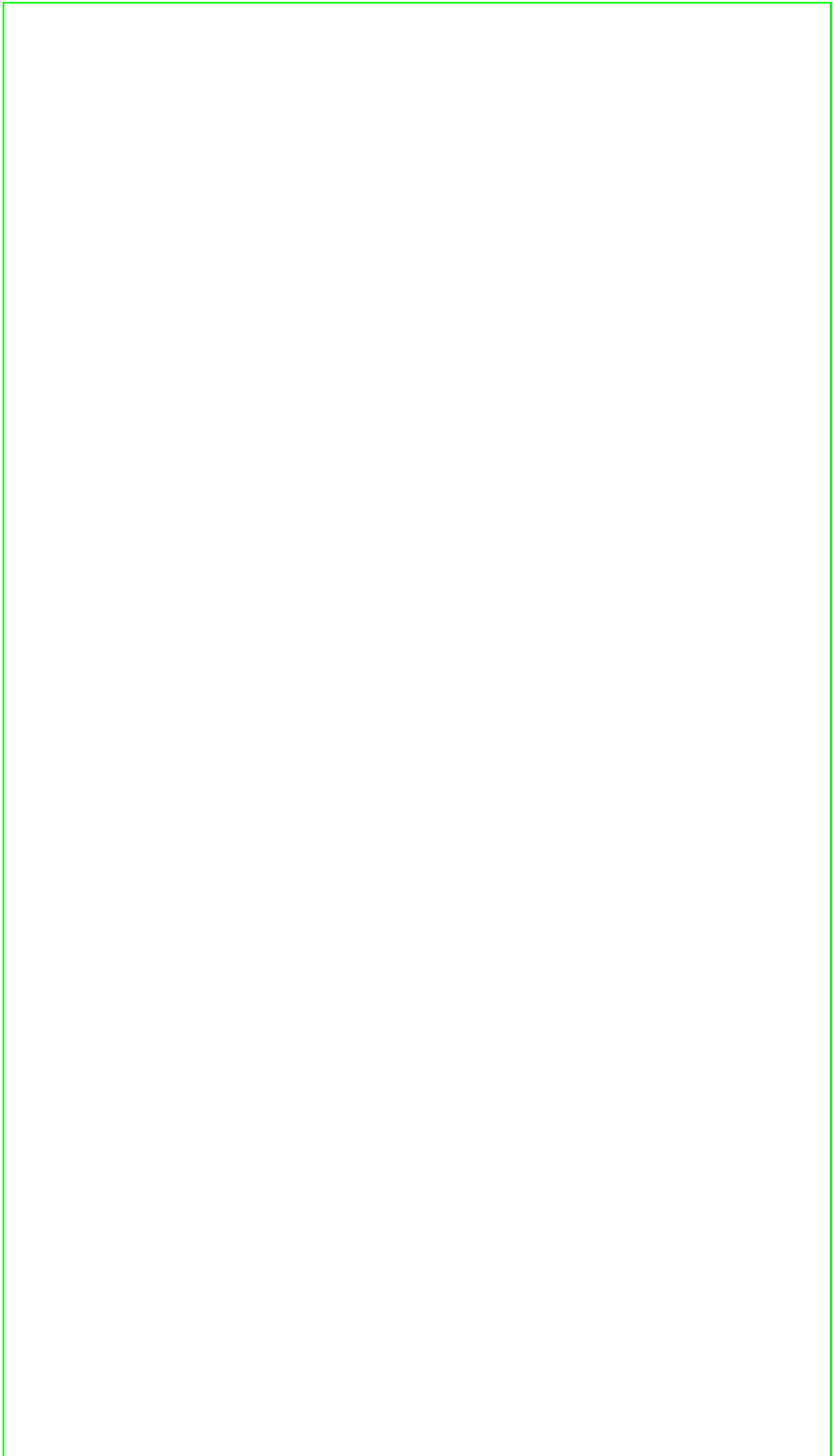
(2) An examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states or departments or agencies of the United States. The director, in lieu of an examination, may accept the examination report of an agency of another state or a department or an agency of the United States or a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the department.

(3) The director may request financial data from a licensee in addition to that required under section 8-2734.

(4) The director may conduct an examination of any authorized delegate of a licensee within this state upon reasonable written notice to the licensee and the authorized delegate. The director may conduct an examination of any authorized delegate without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with the Nebraska Money Transmitters Act.

(5) The total charge for an examination under this section shall be paid by the licensee or authorized delegate as set forth in sections 8-605 and 8-606.

Source: Laws 2013, LB616, § 37; Laws 2019, LB355, § 1.
Operative date September 1, 2019.



CHAPTER 9

BINGO AND OTHER GAMBLING

Article.

1. General Provisions. 9-1,101.
8. State Lottery. 9-823.

ARTICLE 1

GENERAL PROVISIONS

Section

9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) Beginning July 1, 2019, through June 30, 2021, on or before the last day of the last month of each calendar quarter, the State Treasurer shall transfer one hundred thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund. Beginning July 1, 2021, on or before November 1 each year, the State Treasurer shall transfer one hundred 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 one hundred thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8; Laws 2018, LB945, § 9; Laws 2019, LB298, § 13.
Effective date May 28, 2019.

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 8 STATE LOTTERY

Section
9-823. Rules and regulations; enumerated; Tax Commissioner; duties.

9-823 Rules and regulations; enumerated; Tax Commissioner; duties.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) the drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after the drawing, and (iii) the drawing shall be recorded on videotape with an audio track; and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an online game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of age shall be awarded to the parent or guardian or custodian of the person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that

confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with additional specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one claimant is entitled to a particular prize, the sole right of such claimants shall be the award to each of them of an equal share in the prize; and

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid;

(6) Requirements for eligibility for participation in grand prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless the establishment holds a Class C liquor license with a sampling designation as provided in subsection (6) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10)(a) The form and type of marketing of informational and educational material.

(b) Beginning on September 1, 2019, all lottery advertisements shall disclose the odds of winning the prize with the largest value for any lottery game in a clear and conspicuous manner. Such disclosure shall be in a font size of not less than thirty-five percent of the largest font used in the advertisement, except that for any online advertisement, such disclosure shall be in a font size of at least ten points. This subdivision (b) shall not apply to advertisements printed, distributed, broadcast, or otherwise disseminated or conducted prior to September 1, 2019;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Source: Laws 1991, LB 849, § 23; Laws 1992, LB 907, § 25; Laws 1992, LB 1257, § 58; Laws 1993, LB 138, § 43; Laws 1994, LB 1313, § 1; Laws 1995, LB 343, § 4; Laws 2010, LB861, § 4; Laws 2019, LB252, § 1.

Effective date September 1, 2019.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

CHAPTER 11

BONDS AND OATHS, OFFICIAL

Article.

2. State Bond Approval. 11-201.

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, 48-804.03, 53-109, 54-191, 55-123, 55-126, 55-127, 55-150, 57-917, 60-1303, 60-1502, 71-222.01, 72-1241, 77-366, 80-401.02, 81-111, 81-151, 81-5,167, 81-8,128, 81-8,141, 81-1108.14, 81-2002, 83-128, 84-106, 84-206, and 84-801;

(2) To pass upon the sufficiency of and approve the surety on the bonds or equivalent commercial insurance of all officers and employees of the state, when approval is not otherwise prescribed by any specific statute;

(3) To arrange for the writing of corporate surety bonds or equivalent commercial insurance for all the officers and employees of the state who are required by statute to furnish bonds;

(4) To arrange for the writing of the blanket corporate surety bond or equivalent commercial insurance required by this section; and

(5) To order the payment of corporate surety bond or equivalent commercial insurance premiums out of the State Insurance Fund created by section 81-8,239.02.

All state employees not specifically required to give bond by section 11-119 shall be bonded under a blanket corporate surety bond or insured under equivalent commercial insurance for faithful performance and honesty in an amount determined by the Risk Manager.

The Risk Manager may separately bond any officer, employee, or group thereof under a separate corporate surety bond or equivalent commercial

insurance policy for performance and honesty pursuant to the standards set forth in subdivision (1) of this section if the corporate surety or commercial insurer will not bond or insure or excludes from coverage any officer, employee, or group thereof under the blanket bond or commercial insurance required by this section, or if the Risk Manager finds that the reasonable availability or cost of the blanket bond or commercial insurance required under this section is adversely affected by any of the following factors: The loss experience, types of risks to be bonded or insured, relationship of premium to risks involved, past and projected trends for premiums, or any other factors.

Surety bonds of collection agencies, as required by section 45-608, and detective agencies, as required by section 71-3207, shall be approved by the Secretary of State. The Attorney General shall approve all bond forms distributed by the Secretary of State.

Source: Laws 1945, c. 13, § 1, p. 112; Laws 1955, c. 17, § 1, p. 88; Laws 1967, c. 36, § 3, p. 162; Laws 1969, c. 54, § 1, p. 354; Laws 1978, LB 653, § 8; Laws 1981, LB 273, § 1; Laws 1994, LB 1210, § 1; Laws 1996, LB 1044, § 45; Laws 1998, LB 922, § 392; Laws 2000, LB 901, § 1; Laws 2003, LB 242, § 1; Laws 2004, LB 884, § 10; Laws 2007, LB334, § 2; Laws 2010, LB722, § 1; Laws 2019, LB301, § 82.

Operative date July 1, 2019.

CHAPTER 13

CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

3. Political Subdivisions; Particular Classes and Projects.
 - (h) Public Safety Services. 13-319.
5. Budgets.
 - (a) Nebraska Budget Act. 13-503, 13-509.
 - (d) Budget Limitations. 13-518 to 13-520.
9. Political Subdivisions Tort Claims Act. 13-910.
12. Nebraska Public Transportation Act. 13-1205 to 13-1213.
13. Public Building Commission. 13-1302.
17. Solid Waste Disposal. 13-1701.
19. Development Districts. 13-1901, 13-1907.
20. Integrated Solid Waste Management. 13-2008 to 13-2042.01.
21. Enterprise Zones. 13-2103, 13-2112.
22. Local Government Miscellaneous Expenditures. 13-2202, 13-2203.
24. Retirement Benefits and Plans. 13-2401.
27. Civic and Community Center Financing Act. 13-2702 to 13-2707.01.
29. Political Subdivisions Construction Alternatives Act. 13-2914.
32. Property Assessed Clean Energy Act. 13-3202 to 13-3210.

ARTICLE 3

POLITICAL SUBDIVISIONS; PARTICULAR CLASSES AND PROJECTS

(h) PUBLIC SAFETY SERVICES

Section

13-319. County; sales and use tax authorized; limitation; election.

(h) PUBLIC SAFETY SERVICES

13-319 County; sales and use tax authorized; limitation; election.

Any county by resolution of the governing body may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions sourced as provided in sections 77-2703.01 to 77-2703.04 within the county, but outside any incorporated municipality which has adopted a local sales tax pursuant to section 77-27,142, on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any sales and use tax imposed pursuant to this section must be used (1) to finance public safety services provided by a public safety commission, (2) to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act, or (3) to finance public safety services provided by the county. A sales and use tax shall not be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved the tax pursuant to sections 13-322 and 13-323. A sales and use tax shall not be imposed pursuant to this section if the county is imposing a tax pursuant to section 77-6403.

Source: Laws 1996, LB 1177, § 6; Laws 1999, LB 87, § 53; Laws 2003, LB 282, § 2; Laws 2011, LB106, § 2; Laws 2019, LB472, § 7. Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.
 Joint Public Agency Act, see section 13-2501.
 Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 5
BUDGETS

(a) NEBRASKA BUDGET ACT

Section

- 13-503. Terms, defined.
- 13-509. County assessor; certify taxable value; when; annexation of property; governing body; duties.

(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 means the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, regional metropolitan transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board means any governing body which has the power or duty to levy a tax;

(3) Fiscal year means the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax means any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor means the Auditor of Public Accounts;

(6) Cash reserve means funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds means all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement means a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund means any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city, village, or natural resources district in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget means (a) 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, (b) a budget by a city of the first or second class or village that provides for a biennial period to determine and carry on the city's or village's financial and taxing affairs, or (c) a budget by a natural resources district that provides for a biennial period to determine and carry on the natural resources district's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1; Laws 2013, LB111, § 1; Laws 2015, LB164, § 2; Laws 2019, LB492, § 26.
Effective date September 1, 2019.

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.

13-509 County assessor; certify taxable value; when; annexation of property; governing body; duties.

(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. The certification shall be provided to the governing body or board (a) by mail if requested by the governing body or board, (b) electronically, or (c) by listing such certification on the county assessor's web site.

(2) 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.

(3) If a political subdivision annexes property since the last time taxable values were certified under subsection (1) of this section, the governing body of such political subdivision shall file and record a certified copy of the annexation ordinance, petition, or resolution in the office of the register of deeds or, if none, the county clerk and the county assessor of the county in which the annexed property is located. The annexation ordinance, petition, or resolution shall include a full legal description of the annexed property. If the register of deeds or county clerk receives and records such ordinance, petition, or resolution prior to July 1 or, for annexations by a city of the metropolitan class, prior to August 1, the valuation of the real and personal property annexed shall be considered in the taxable valuation of the annexing political subdivision for the current year. If the register of deeds or county clerk receives and records such ordinance, petition, or resolution on or after July 1 or, for annexations by a city of the metropolitan class, on or after August 1, the valuation of the real and personal property annexed shall be considered in the taxable valuation of the annexing political subdivision for 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; Laws 2017, LB217, § 2; Laws 2019, LB524, § 1.
Effective date September 1, 2019.

(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, 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;

(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 renewable 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 and reimbursement provided pursuant to section 77-1239;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 60-3,184 to 60-3,190, 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 Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) 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; Laws 2011, LB59, § 1; Laws 2011, LB383, § 1; Laws 2012, LB946, § 8; Laws 2015,

LB259, § 4; Laws 2015, LB424, § 1; Laws 2017, LB382, § 1;
Laws 2019, LB3, § 1.
Effective date September 1, 2019.

Cross References

Community College Aid Act, see section 85-2231.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivisions (1)(b) and (c) 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. 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.

(c) For fiscal year 2017-18, the last prior year's total of restricted funds for counties shall be the last prior year's total of restricted funds less the last prior year's restricted funds budgeted by counties under sections 39-2501 to 39-2520, plus the last prior year's amount of restricted funds budgeted by counties under sections 39-2501 to 39-2520 to be used for capital improvements.

(d) The limitations of subdivision (1)(a) of this section shall not apply to the budget or budget statement adopted by a regional metropolitan transit authority for the first five fiscal years commencing on the January 1 that follows the effective date of the conversion of the transit authority established under the Transit Authority Law into a regional metropolitan transit authority.

(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, for a period of one year, 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; Laws 2015, LB261, § 1; Laws 2017, LB382, § 2; Laws 2019, LB212, § 1; Laws 2019, LB492, § 27.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB212, section 1, with LB492, section 27, to reflect all amendments.

Cross References

Election Act, see section 32-101.

Transit Authority Law, see section 14-1826.

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 bonds as defined in subdivision (1) of section 10-134 and approved according to law, (4) restricted funds used by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport, (5) 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, (6) 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, (7) 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, or (8) 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.

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; Laws 2015, LB261, § 2; Laws 2017, LB339, § 73; Laws 2019, LB212, § 2.
Effective date September 1, 2019.

Cross References

Emergency Management Act, see section 81-829.36.

Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 9

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section

13-910. Act and sections; exemptions.

13-910 Act and sections; exemptions.

The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation is valid;

(2) Any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion is abused;

(3) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to such political subdivision to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the political subdivision had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(4) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim based upon the negligent execution by an employee of the political subdivision in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act except when such title is issued upon an application filed electronically by an

approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507;

(5) Any claim arising with respect to the assessment or collection of any tax or fee or the detention of any goods or merchandise by any law enforcement officer;

(6) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(7) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, except that this subdivision does not apply to a claim under the Healthy Pregnancies for Incarcerated Women Act;

(8) Any claim by an employee of the political subdivision which is covered by the Nebraska Workers' Compensation Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the political subdivision responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any political subdivision in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the political subdivision or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if (a) the political subdivision has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim or (b) the claim arose during the time specified in a notice provided by the political subdivision pursuant to subsection (3) of section 39-1359 and the state or political subdivision had actual or constructive notice; or

(13)(a) Any claim relating to recreational activities for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or

localized defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (3) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the political subdivision and used for recreational activities.

Source: Laws 1969, c. 138, § 9, p. 629; Laws 1986, LB 811, § 10; R.S.Supp., 1986, § 23-2409; Laws 1992, LB 262, § 8; Laws 1993, LB 370, § 2; Laws 1996, LB 900, § 1025; Laws 1999, LB 228, § 1; Laws 2004, LB 560, § 1; Laws 2005, LB 276, § 98; Laws 2007, LB564, § 2; Laws 2011, LB589, § 2; Laws 2017, LB263, § 1; Laws 2019, LB690, § 8.
Effective date September 1, 2019.

Cross References

Healthy Pregnancies for Incarcerated Women Act, see section 47-1001.

Motor Vehicle Certificate of Title Act, see section 60-101.

Nebraska Workers' Compensation Act, see section 48-1,110.

State Boat Act, see section 37-1201.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section

13-1205. Department; powers, duties, and responsibilities; enumerated.

Section

13-1209. Assistance program; established; state financial assistance; limitation.

13-1213. Intercity bus system assistance program; established; financial assistance available; selection; contracts authorized.

13-1205 Department; powers, duties, and responsibilities; enumerated.

The department shall have the following powers, duties, and responsibilities:

(1) To collect and maintain data on the level of public transportation services and needs in the state and identify areas not being adequately served by existing public or private transportation services;

(2) To assess the regional and statewide effect of changes, improvement, and route abandonments in the state's public transportation system;

(3) To develop a six-year statewide transit plan and programs for public transportation in coordination with local plans and programs developed by municipalities, counties, transit authorities, and regional metropolitan transit authorities;

(4) To provide planning and technical assistance to agencies of the state, political subdivisions, or groups seeking to improve public transportation;

(5) To advise, consult, and cooperate with agencies of the state, the federal government, and other states, interstate agencies, political subdivisions, and groups concerned with public transportation;

(6) To cooperate with the Public Service Commission by providing periodic assessments to the commission when determining the effect of proposed regulatory decisions on public transportation;

(7) To administer federal and state programs providing financial assistance to public transportation, except those federal and state programs in which a municipality, county, transit authority, regional metropolitan transit authority, or other state agency is designated as the administrator; and

(8) To exercise all other powers necessary and proper for the discharge of its duties, including the adoption and promulgation of reasonable rules and regulations to carry out the Nebraska Public Transportation Act.

Source: Laws 1975, LB 443, § 9; Laws 1979, LB 322, § 4; Laws 1981, LB 545, § 4; Laws 1981, LB 144, § 4; R.S.1943, (1983), § 19-3905; Laws 1993, LB 158, § 4; Laws 2012, LB782, § 16; Laws 2013, LB222, § 3; Laws 2019, LB492, § 28.

Effective date September 1, 2019.

13-1209 Assistance program; established; state financial assistance; limitation.

(1) A public transportation assistance program is hereby established to provide state assistance for the capital acquisition and operating costs of public transportation systems.

(2) Any municipality, county, transit authority, regional metropolitan transit authority, or qualified public-purpose organization shall be eligible to receive financial assistance for the eligible capital acquisition and operating costs of a public transportation system, whether the applicant directly operates such system or contracts for its operation. A qualified public-purpose organization shall not be eligible for financial assistance under the Nebraska Public Transportation Act if such organization is currently receiving state funds for a

program which includes transportation services and such funding and services would be duplicated by the act. Eligible operating costs include those expenses incurred in the operation of a public transportation system which exceed the amount of operating revenue and which are not otherwise eligible for reimbursement from any available federal programs other than those administered by the United States Department of the Treasury. Eligible capital acquisition costs include investments in the purchase, replacement, and rebuilding of buses and other vehicles used for public transportation.

(3) The state grant to an applicant shall not exceed fifty percent of the eligible capital acquisition or operating costs of the public transportation system as provided for in subsection (2) of this section. The amount of state funds shall be matched by an equal amount of local funds in support of capital acquisition or operating costs.

Source: Laws 1975, LB 443, § 13; Laws 1981, LB 144, § 6; R.S.1943, (1983), § 19-3909; Laws 1993, LB 158, § 6; Laws 2016, LB977, § 1; Laws 2019, LB492, § 29.
Effective date September 1, 2019.

13-1213 Intercity bus system assistance program; established; financial assistance available; selection; contracts authorized.

(1) An intercity bus system assistance program is hereby established to provide state assistance for the operation of intercity bus systems.

(2) Any municipality, county, transit authority, regional metropolitan transit authority, or qualified public-purpose organization shall be eligible to receive (a) financial assistance for the eligible operating costs of such system, whether the applicant directly operates the system or contracts for its operation, and (b) financial assistance to match federal funds available for the purchase of vehicles and equipment for the start of an intercity bus system or the replacement of vehicles used in the operation of an intercity bus system. The vehicles shall be titled to such municipality, county, transit authority, regional metropolitan transit authority, or qualified public-purpose organization.

(3) The department may contract for an intercity bus system with either a publicly owned provider or a provider owned by a qualified public-purpose organization.

(4) Any intercity bus system to be funded under this section shall be selected based on criteria established by the department.

Source: Laws 1993, LB 158, § 8; Laws 1996, LB 383, § 1; Laws 2019, LB492, § 30.
Effective date September 1, 2019.

ARTICLE 13

PUBLIC BUILDING COMMISSION

Section

13-1302. Terms, defined.

13-1302 Terms, defined.

For purposes of sections 13-1301 to 13-1312, unless the context otherwise requires:

(1) Bonds means bonds issued by the commission pursuant to such sections;

(2) City means a city of the metropolitan class as defined in section 14-101 or a city of the primary class as defined in section 15-101, the population of which according to the most recent federal census or the most recent revised certified count by the United States Bureau of the Census was more than one-half in number of the total population, according to such census or revised count, of the county in which such city is located;

(3) Commission means a public building commission created by and activated pursuant to sections 13-1301 to 13-1312;

(4) County means a county in which a city of the metropolitan class or primary class is located;

(5) Governing body means the city council in the case of the city and the county board in the case of the county;

(6) Other governmental units means a city, other than a city as defined in this section, village, district, authority, public agency, board, commission, or other public corporation, political subdivision, or public instrumentality located in whole or in part in the county; and

(7) Project means any building, structure, or facility for public purposes to be used jointly by the city and the county, including the site thereof, all machinery, equipment, and apparatus of or pertaining thereto, including fixtures and furnishings if agreed to by the city and the county, and all other real or personal property necessary or incidental thereto.

Source: Laws 1971, LB 1003, § 2; R.S.1943, (1983), § 23-2602; Laws 1990, LB 1098, § 2; Laws 2011, LB480, § 1; Laws 2019, LB67, § 2.

Effective date September 1, 2019.

ARTICLE 17

SOLID WASTE DISPOSAL

Section

13-1701. Terms, defined.

13-1701 Terms, defined.

For purposes of sections 13-1701 to 13-1714 and 76-2,119:

(1) Applicant shall mean any person as defined in section 81-1502 who is required to obtain a permit from the department for a solid waste disposal area or a solid waste processing facility but shall not include any person applying for renewal of such a permit or any person as defined in such section who proposes to dispose of waste which he or she generates on property which he or she owns as of January 1, 1991;

(2) Department shall mean the Department of Environment and Energy;

(3) Solid waste disposal area shall mean an area used for the disposal of solid waste from more than one residential premises or from one or more recreational, commercial, industrial, manufacturing, or governmental operations; and

(4) Solid waste processing facility shall mean an incinerator or a compost plant receiving material, other than yard waste, in quantities greater than one thousand cubic yards annually.

Source: Laws 1991, LB 813, § 1; Laws 1992, LB 1257, § 59; Laws 2019, LB302, § 15.

Operative date July 1, 2019.

ARTICLE 19
DEVELOPMENT DISTRICTS

Section

13-1901. Nebraska planning and development regions; created.

13-1907. Rules and regulations; annual reports; evaluation; Governor; powers.

13-1901 Nebraska planning and development regions; created.

(1) There are hereby created nine Nebraska planning and development regions as follows:

(a) Region 1 includes the counties of Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel;

(b) Region 2 includes the counties of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, and Sherman;

(c) Region 3 includes the counties of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas;

(d) Region 4 includes the counties of Howard, Merrick, Buffalo, Hall, Hamilton, Phelps, Kearney, Adams, Clay, Harlan, Franklin, Webster, and Nuckolls;

(e) Region 5 includes the counties of Knox, Cedar, Dixon, Antelope, Pierce, Wayne, Thurston, Boone, Madison, Stanton, Cuming, Burt, Platte, Colfax, Dodge, and Nance;

(f) Region 6 includes the counties of Polk, Butler, Saunders, York, Seward, Fillmore, Saline, Otoe, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(g) Region 7 includes the county of Lancaster;

(h) Region 8 includes the counties of Washington, Douglas, Sarpy, and Cass; and

(i) Region 9 includes the county of Dakota.

(2) In order to facilitate development of a process which will allow for future changes to the boundaries of the Nebraska planning and development regions, until July 1, 2020, a county, city, village, or development district shall not engage in negotiations to change the boundaries of the planning and development regions. This subsection does not prohibit negotiations relating to implementation of the changes to the boundaries made by Laws 2019, LB334.

Source: Laws 1992, LB 573, § 1; Laws 2019, LB334, § 1.
Effective date September 1, 2019.

13-1907 Rules and regulations; annual reports; evaluation; Governor; powers.

(1) The Department of Economic Development may adopt and promulgate rules and regulations to carry out sections 13-1901 to 13-1907, including standardized reporting and application procedures. Each development district shall submit annual performance and financial reports to the department which shall address the activities performed and services delivered.

(2) The Governor shall, from time to time, evaluate the effectiveness and activities of the development districts receiving assistance. If the Governor finds

a development district to be ineffective, he or she may take action, including the withholding of assistance authorized under section 13-1906.

Source: Laws 1992, LB 573, § 7; Laws 2015, LB661, § 27; Laws 2019, LB334, § 2.

Effective date September 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 20

INTEGRATED SOLID WASTE MANAGEMENT

Section

13-2008. Department, defined.

13-2009. Director, defined.

13-2042.01. Landfill disposal fee; rebate to municipality or county; application; Department of Environment and Energy; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

13-2008 Department, defined.

Department shall mean the Department of Environment and Energy.

Source: Laws 1992, LB 1257, § 8; Laws 2019, LB302, § 16.

Operative date July 1, 2019.

13-2009 Director, defined.

Director shall mean the Director of Environment and Energy.

Source: Laws 1992, LB 1257, § 9; Laws 2019, LB302, § 17.

Operative date July 1, 2019.

13-2042.01 Landfill disposal fee; rebate to municipality or county; application; Department of Environment and Energy; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

(1) The Department of Environment and Energy 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 Environment and Energy 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 Environment and Energy within thirty days after receiving the review request. The Department of Environment and Energy 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 Environment and Energy, 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 Environment and Energy 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; Laws 2019, LB302, § 18.
Operative date July 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 21
ENTERPRISE ZONES

Section

13-2103. Designation; application; requirements; limitation; term.

13-2112. Rules and regulations.

13-2103 Designation; application; requirements; limitation; term.

(1)(a) Beginning on December 1, 2014, the department shall, for a period of one hundred eighty days, accept formal applications for the designation of enterprise zones. Within sixty days after the end of such application period, the department may designate not more than five areas as enterprise zones based on eligible applications it has received.

(b) If the department has received fewer than five applications for the designation of enterprise zones after the end of the application period described in subdivision (1)(a) of this section, the department may establish a period of time within which to accept additional applications. Within sixty days after the end of such extended application period, the department may designate additional areas as enterprise zones based on additional eligible applications received, but not more than a total of five areas may be designated as enterprise zones pursuant to this section.

(c) In the application period, the department may reject from consideration any application which does not fully and completely comport with the provisions of section 13-2104 at the end of the designated application period. In choosing among eligible applications for enterprise zone designation, the department shall consider the levels of distress existing within the applicant areas and the contents of the applicant's formal enterprise zone application.

(d) Each area designated as an enterprise zone shall meet all eligibility criteria. Of the enterprise zones authorized, no more than one shall be located inside the boundaries of a city of the metropolitan class and no more than one inside a city of the primary class.

(2) Any city, village, tribal government area, or county may apply for designation of an area within such city, village, tribal government area, or county as an enterprise zone, except that if a county seeks to have an area within an incorporated city or village or a tribal government area designated as an enterprise zone, the consent of the governing body of such city, village, or tribal government area shall first be required.

(3) If an incorporated city or village or a tribal government area consents, a county may apply on behalf of the city, village, or tribal government area for certification of an area within such city, village, or tribal government area as an enterprise zone. Both a county and a city, village, or tribal government area shall not apply for certification of the same area.

(4) Two or more counties or tribal government areas may jointly apply for designation of an area as an enterprise zone which is located on both sides of their common boundaries.

(5) Political subdivisions wishing to file an application for designation of an enterprise zone shall first follow the procedures set out in sections 13-2106 to 13-2108. An application for designation as an enterprise zone shall be in a form and contain information prescribed by the department pursuant to section 13-2104.

(6) An area designated as an enterprise zone shall retain such designation for a period of ten years from the date of such designation.

(7) All enterprise zones designated as such within a single county shall not exceed a total of sixteen square miles in area.

Source: Laws 1992, LB 1240, § 3; Laws 1993, LB 725, § 4; Laws 2014, LB800, § 1; Laws 2016, LB948, § 1; Laws 2019, LB334, § 3. Effective date September 1, 2019.

13-2112 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Enterprise Zone Act.

Source: Laws 1992, LB 1240, § 12; Laws 1993, LB 725, § 15; Laws 2014, LB800, § 4; Laws 2019, LB334, § 4. Effective date September 1, 2019.

ARTICLE 22

LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section

13-2202. Terms, defined.

13-2203. Additional expenditures; governing body; powers; procedures.

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 city 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, regional metropolitan transit authority, 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, regional metropolitan transit authorities, 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; Laws 2019, LB492, § 31. Effective date September 1, 2019.

13-2203 Additional expenditures; governing body; powers; procedures.

In addition to other expenditures authorized by law, each governing body may approve:

(1)(a) The expenditure of public funds for the payment or reimbursement of actual and necessary expenses incurred by elected and appointed officials, employees, or volunteers at educational workshops, conferences, training programs, official functions, hearings, or meetings, whether incurred within or outside the boundaries of the local government, if the governing body gave prior approval for participation or attendance at the event and for payment or reimbursement either by the formal adoption of a uniform policy or by a formal vote of the governing body. Authorized expenses may include:

(i) Registration costs, tuition costs, fees, or charges;

(ii) Mileage at the rate allowed by section 81-1176 for travel by personal automobile, but if travel by rental vehicle or commercial or charter means is economical and practical, then authorized expenses shall include only the actual cost of the rental vehicle or commercial or charter means. The governing body may establish different mileage rates based on whether the personal automobile usage is at the convenience of the local government or at the convenience of the local government's elected or appointed official, employee, or volunteer; and

(iii) Meals and lodging at a rate not exceeding the applicable federal rate unless a fully itemized claim is submitted substantiating the costs actually incurred in excess of such rate and such additional expenses are expressly approved by the governing body; and

(b) Authorized expenditures shall not include expenditures for meals of paid members of a governing body provided while such members are attending a public meeting of the governing body unless such meeting is a joint public meeting with one or more other governing bodies;

(2) The expenditure of public funds for:

(a) Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and

(b) Nonalcoholic beverages and meals:

(i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;

(ii) Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or

(iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed fifty dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body; and

(3) The expenditure of public funds for plaques, certificates of achievement, or items of value awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions. Before making any such expenditure, the governing body shall, by official action after a public hearing, establish a uniform policy which sets a dollar limit on the value of any plaque, certificate of achievement, or item of value to be awarded. Such policy, following its initial adoption, shall not be amended or altered more than once in any twelve-month period.

Source: Laws 1993, LB 734, § 11; Laws 2018, LB1036, § 1; Laws 2019, LB609, § 1.
Effective date September 1, 2019.

ARTICLE 24

RETIREMENT BENEFITS AND PLANS

Section

13-2401. Transfer between political subdivisions; rights of employee; transferring and receiving entities; powers and duties.

13-2401 Transfer between political subdivisions; rights of employee; transferring and receiving entities; powers and duties.

(1) For purposes of this section:

(a) Political subdivision includes villages, cities of all classes, counties, municipal counties, school districts, and all other units of local government, including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision does not include any contractor with a political subdivision;

(b) Receiving entity means a political subdivision which receives transferred employees from a separate political subdivision; and

(c) Transferring entity means a political subdivision which is transferring employees to a separate political subdivision.

(2) For transfers involving a retirement system which maintains a defined benefit plan, the transfer value of the transferring employee's accrued benefit shall be calculated by one or both of the retirement systems involved as follows:

(a) If the retirement system of the transferring entity maintains a defined benefit plan, an initial benefit transfer value of the employee's accrued benefit

shall be determined by calculating the present value of the employee's retirement benefit based on the employee's years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the transferring entity so that the effect on the retirement system of the transferring entity will be actuarially neutral; and

(b) If the retirement system of the receiving entity maintains a defined benefit plan, the final benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit as if the employee were employed on the date of transfer and had completed the same amount of service with the same compensation as the employee actually completed at the transferring entity prior to transfer. The calculation shall then be based on the employee's assumed years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the receiving entity so that the effect on the retirement system of the receiving entity will be actuarially neutral.

(3) A full-time or part-time employee of a transferring entity who becomes an employee of a receiving entity pursuant to a merger of services shall receive credit for his or her years of participation in the retirement system of the transferring entity for purposes of membership in the retirement system of the receiving entity.

(4) An employee referred to in subsection (3) of this section shall have his or her participation in the retirement system of the transferring entity transferred to the retirement system of the receiving entity through one of the following options:

(a) If the retirement system of the receiving entity maintains a defined contribution plan, the employee shall transfer all of his or her funds by paying to the retirement system of the receiving entity from funds held by the retirement system of the transferring entity an amount equal to one of the following: (i) If the retirement system of the transferring entity maintains a defined benefit plan, an amount not to exceed the initial benefit transfer value, leaving no funds attributable to the transferred employee within the retirement system of the transferring entity, or (ii) if the retirement system of the transferring entity maintains a defined contribution plan, an amount not to exceed the employee and employer accounts of the transferring employee plus earnings during the period of employment with the transferring entity. The employee shall receive eligibility and vesting credit for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the transferring entity. Payment shall be made within five years after employment begins with the receiving entity or prior to retirement, whichever comes first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization; or

(b) If the retirement system of the receiving entity maintains a defined benefit plan, the employee shall transfer all of his or her funds out of the retirement system of the transferring entity to purchase service credits that will generate a final benefit transfer value not to exceed the employee's initial benefit transfer value in the retirement system of the transferring entity. After such purchase, the employee shall receive eligibility and vesting credit in the retirement system of the receiving entity for his or her years of service in a governmental plan, as defined in section 414(d) of the Internal Revenue Code, maintained by the transferring entity. The amount to be paid by the member for such service

credit shall equal the actuarial cost to the retirement system of the receiving entity for allowing such additional service credit to the employee. If any funds remain in the retirement system of the transferring entity after the employee has purchased service credits in the retirement system of the receiving entity, such remaining funds shall be rolled over into another qualified trust under section 401(a) of the Internal Revenue Code, an individual retirement account, or an individual retirement annuity. Payment shall be made within five years after the transfer of services, but prior to retirement, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(5) The transferring entity, the receiving entity, and the employees who are being transferred may by binding agreement determine which parties will provide funds to pay any amount needed to purchase creditable service in the retirement system of the receiving entity sufficient to provide a final benefit transfer value not to exceed the employee's initial benefit transfer value, if the amount of a direct rollover from the retirement system of the transferring entity is not sufficient to provide a final benefit transfer value in the retirement system of the receiving entity.

(6) The retirement system of the receiving entity may accept cash rollover contributions from a member who is making payment pursuant to this section if the contributions do not exceed the amount of payment required for the service credits purchased by the member and the contributions represent (a) all or any portion of the balance of the member's interest in a qualified trust under section 401(a) of the Internal Revenue Code or (b) the interest of the member from an individual retirement account or an individual retirement annuity, all of which is attributable to a qualified total distribution, as defined in the Internal Revenue Code, from a qualified trust under section 401(a) of the code and qualified as a tax-free rollover amount. The member's interest under subdivision (a) or (b) of this subsection must be transferred to the retirement system within sixty days after the date of the distribution from the qualified trust, individual retirement account, or individual retirement annuity.

(7) Cash transferred to the retirement system of the receiving entity as a rollover contribution shall be deposited as other contributions.

(8) The retirement system of the receiving entity may accept direct rollover distributions made from a qualified trust pursuant to section 401(a)(31) of the Internal Revenue Code. The direct rollover distribution shall be deposited as all other payments under this section.

(9) The receiving entity or its retirement system shall adopt provisions defining procedures for acceptance of rollovers which are consistent with sections 401(a)(31) and 402 of the Internal Revenue Code.

(10) Any retirement system authorized pursuant to section 14-1805, 15-1017, 16-1004, 16-1023, 18-812, 19-3501, 23-1118, or 23-2330.04 or any retirement system for a city of the metropolitan class authorized pursuant to home rule charter shall be modified to conform with this section prior to any merger of service involving such system.

Source: Laws 1997, LB 250, § 4; Laws 1997, LB 624, § 45; Laws 1998, LB 1191, § 4; Laws 1999, LB 87, § 58; Laws 2001, LB 142, § 28; Laws 2019, LB492, § 32.
Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

ARTICLE 27

CIVIC AND COMMUNITY CENTER FINANCING ACT

Section

- 13-2702. Purpose of act.
 13-2703. Terms, defined.
 13-2704. Civic and Community Center Financing Fund; created; use; investment.
 13-2704.01. Grants of assistance; purposes; applications; evaluation.
 13-2705. Conditional grant approval; limits; conditions; notice to State Historic Preservation Officer.
 13-2707. Department; evaluation criteria; match required; location.
 13-2707.01. Grant; engineering and technical studies; evaluation criteria.

13-2702 Purpose of act.

The purpose of the Civic and Community Center Financing Act is to support the development of civic centers, historic buildings or districts, public spaces, and recreation centers throughout Nebraska. Furthermore, the act is intended to support projects that foster maintenance or growth of communities.

Source: Laws 1999, LB 382, § 14; Laws 2011, LB297, § 3; Laws 2013, LB153, § 2; Laws 2019, LB564, § 1.
 Effective date September 1, 2019.

13-2703 Terms, defined.

For purposes of the Civic and Community Center Financing Act:

- (1) Civic center means a facility that is used to host conventions, meetings, and cultural events or a library;
- (2) Department means the Department of Economic Development;
- (3) Eligible facility means any civic center, historic building or district, public space, or recreation center;
- (4) Fund means the Civic and Community Center Financing Fund;
- (5) Historic building or district means a building or district eligible for listing on or currently listed on the National Register of Historic Places or a building that is certified as contributing to the significance of a registered state or national historic district;
- (6) Political subdivision means a county, school district, community college area, or natural resources district;
- (7) Public space means property located within the traditional center of a community, typically comprised of a cohesive core of residential, civic, religious, and commercial buildings, arranged around a main street and intersecting streets; and
- (8) Recreation center means a facility or park used for athletics, fitness, sport activities, or recreation that is owned by a municipality and is available for use by the general public with or without charge. Recreation center does not

include any facility that requires a person to purchase a membership to utilize such facility.

Source: Laws 1999, LB 382, § 15; Laws 2011, LB297, § 4; Laws 2013, LB153, § 3; Laws 2018, LB940, § 1; Laws 2019, LB564, § 2.
Effective date September 1, 2019.

13-2704 Civic and Community Center Financing Fund; created; use; investment.

(1) The Civic and Community Center Financing Fund is created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Transfers may be made from the fund to the General Fund, the Department of Revenue Enforcement Fund, and the State Colleges Sport Facilities Cash Fund at the direction of the Legislature.

(2)(a) The department shall use the Civic and Community Center Financing Fund for the following purposes:

(i) For grants of assistance as described in section 13-2704.01;

(ii) For grants of assistance as described in section 13-2704.02; and

(iii) For reasonable and necessary costs of the department directly related to the administration of the fund, not to exceed the amount needed to employ a one-half full-time equivalent employee.

(b) Grants of assistance shall not be used for programming, marketing, advertising, or facility-staffing activities.

(3) The State Treasurer shall transfer two hundred fifty thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund on October 1 of 2012, 2013, and 2014. Commencing October 1, 2015, and every year thereafter, the State Treasurer shall transfer three hundred thousand dollars from the Civic and Community Center Financing Fund to the State Colleges Sport Facilities Cash Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5; Laws 2011, LB297, § 5; Laws 2012, LB969, § 4; Laws 2013, LB153, § 4; Laws 2015, LB661, § 29; Laws 2019, LB564, § 3.

Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

13-2704.01 Grants of assistance; purposes; applications; evaluation.

(1) The department shall use the fund to provide grants of assistance for the following purposes:

(a) To assist in the construction of new civic centers and recreation centers or the renovation or expansion of existing civic centers and recreation centers;

(b) To assist in the preservation, restoration, conversion, rehabilitation, or reuse of historic buildings or districts; or

(c) To assist in the construction or upgrade of public spaces, including the demolition of substandard and abandoned buildings.

(2) Applications for grants of assistance pursuant to this section shall be evaluated by the department pursuant to section 13-2707.

Source: Laws 2013, LB153, § 5; Laws 2018, LB379, § 3; Laws 2018, LB940, § 2; Laws 2019, LB564, § 4.

Effective date September 1, 2019.

13-2705 Conditional grant approval; limits; conditions; notice to State Historic Preservation Officer.

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants subject to the following limits and requirements:

(1) Except as provided in subdivision (2) of this section, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least fifteen thousand dollars but no more than:

(i) For a city of the primary class, two million two hundred fifty thousand dollars;

(ii) For a city with a population of at least forty thousand inhabitants but fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million one hundred twenty-five thousand dollars;

(iii) For a city with a population of at least twenty thousand inhabitants but fewer than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, seven hundred fifty thousand dollars;

(iv) For a city with a population of at least ten thousand inhabitants but fewer than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, six hundred thousand dollars; and

(v) For a municipality with a population of fewer than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, three hundred seventy-five thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least three thousand dollars but no more than fifteen thousand dollars;

(2) Upon the balance of the fund reaching three million seven hundred fifty thousand dollars, and until the balance of the fund falls below one million five hundred thousand dollars, a grant request shall be in an amount meeting the following requirements:

(a) For a grant of assistance under section 13-2704.01, at least fifteen thousand dollars but no more than:

(i) For a city of the primary class, three million three hundred seventy-five thousand dollars;

(ii) For a city with a population of at least forty thousand inhabitants but fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the

United States Bureau of the Census, one million six hundred eighty-seven thousand dollars;

(iii) For a city with a population of at least twenty thousand inhabitants but fewer than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, one million one hundred twenty-five thousand dollars;

(iv) For a city with a population of at least ten thousand inhabitants but fewer than twenty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, nine hundred thousand dollars; and

(v) For a municipality with a population of fewer than ten thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, five hundred sixty-two thousand dollars; and

(b) For a grant of assistance under section 13-2704.02, at least three thousand dollars but no more than fifteen thousand dollars;

(3) Assistance from the fund shall not amount to more than fifty percent of the cost of the project for which a grant is requested;

(4) A municipality shall not be awarded more than one grant of assistance under section 13-2704.01 and one grant of assistance under section 13-2704.02 in any two-year period;

(5) Any eligible facility for which a grant of assistance under section 13-2704.01 is made shall not be sold for at least five years following the award of such grant of assistance; and

(6) Upon receipt of any application for a grant of assistance to assist in the preservation, restoration, conversion, rehabilitation, or reuse of a historic building or district, the department shall notify the State Historic Preservation Officer of such application. The State Historic Preservation Officer shall evaluate the work proposed in such application to determine whether it conforms to the United States Secretary of the Interior's Standards for the Treatment of Historic Properties and shall notify the department of the determination. If the work does not conform to such standards, the department shall not award a grant of assistance for such application.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1; Laws 2011, LB297, § 6; Laws 2013, LB153, § 7; Laws 2017, LB113, § 3; Laws 2018, LB940, § 3; Laws 2019, LB67, § 3; Laws 2019, LB564, § 5.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB67, section 3, with LB564, section 5, to reflect all amendments.

13-2707 Department; evaluation criteria; match required; location.

(1) The department shall evaluate all applications for grants of assistance under section 13-2704.01 based on the following criteria, which are listed in no particular order of preference:

(a) Retention Impact. Funding decisions by the department shall be based on the likelihood of the project retaining existing residents in the community where the project is located, developing, sustaining, and fostering community connections, and enhancing the potential for economic growth in a manner

that will sustain the quality of life and promote long-term economic development;

(b) New Resident Impact. Funding decisions by the department shall be based on the likelihood of the project attracting new residents to the community where the project is located;

(c) Visitor Impact. Funding decisions by the department shall be based on the likelihood of the project enhancing or creating an attraction that would increase the potential of visitors to the community where the project is located from inside and outside the state;

(d) Readiness. The fiscal, economic, and operational capacity of the applicant, and of any political subdivision that owns the eligible facility jointly with the applicant, to finance and manage the project and to operate the eligible facility; and

(e) Project Planning. Projects with completed technical assistance and feasibility studies shall be preferred to those with no prior planning.

(2) The department shall give priority to applications from municipalities which have not received a grant of assistance under section 13-2704.01 within the last ten years.

(3) Any grant of assistance under section 13-2704.01 shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash.

(4) To receive a grant of assistance under section 13-2704.01, the project for which the grant is requested shall be located in the municipality that applies for the grant or, for any city of the first class, city of the second class, or village, within the municipality's extraterritorial zoning jurisdiction.

(5) To receive a grant of assistance under section 13-2704.01, the project for which the grant is requested shall involve an eligible facility that is owned by the municipality applying for the grant, except that a municipality may own an eligible facility jointly with a political subdivision if the municipality's ownership interest in such eligible facility is at least fifty percent. In any case, the municipality shall be the applicant for the grant of assistance.

Source: Laws 1999, LB 382, § 19; Laws 2003, LB 385, § 3; Laws 2011, LB297, § 7; Laws 2013, LB153, § 8; Laws 2018, LB940, § 4; Laws 2019, LB564, § 6.
Effective date September 1, 2019.

13-2707.01 Grant; engineering and technical studies; evaluation criteria.

The department shall evaluate all applications for grants of assistance under section 13-2704.02 based on the following criteria:

(1) Financial Support. Assistance from the fund shall be matched at least equally from local sources. At least fifty percent of the local match must be in cash. Projects with a higher level of local matching funds shall be preferred as compared to those with a lower level of matching funds; and

(2) Project Location. Assistance from the fund shall be for engineering and technical studies related to projects that will be located in the municipality that

applies for the grant or, for any city of the first class, city of the second class, or village, in the municipality's extraterritorial zoning jurisdiction.

Source: Laws 2013, LB153, § 9; Laws 2019, LB564, § 7.
Effective date September 1, 2019.

ARTICLE 29

POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT

Section

13-2914. Projects excluded.

13-2914 Projects excluded.

A political subdivision shall not use a design-build contract or construction management at risk contract under the Political Subdivisions Construction Alternatives Act 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; Laws 2019, LB583, § 1.
Effective date September 1, 2019.

ARTICLE 32

PROPERTY ASSESSED CLEAN ENERGY ACT

Section

13-3202. Legislative findings.

13-3203. Terms, defined.

13-3204. Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.

13-3205. Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.

13-3210. Use of Interlocal Cooperation Act; public hearing; contract authorized.

13-3202 Legislative findings.

The Legislature finds that:

(1) Energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska's citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. By building the market for energy efficiency and renewable energy products, economic development will be encouraged and new jobs will be created for Nebraskans in the energy efficiency and renewable energy job sectors;

(2) To further these goals, the state should promote energy efficiency improvements and renewable energy systems;

(3) The upfront costs for energy efficiency improvements and renewable energy systems prohibit many property owners from making improvements. Therefore, it is necessary to authorize municipalities to implement an alternative financing method through the creation of clean energy assessment districts; and

(4) Public purposes will be served by providing municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems through the creation of clean energy assessment districts. Such public purposes include, but are not limited to, reduced energy and water costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

Source: Laws 2016, LB1012, § 2; R.S.Supp.,2016, § 18-3202; Laws 2017, LB625, § 2; Laws 2019, LB23, § 1.
Effective date May 2, 2019.

13-3203 Terms, defined.

For purposes of the Property Assessed Clean Energy Act:

(1) Assessment contract means a contract entered into between a municipality, a property owner, and, if applicable, a third-party lender under which the municipality agrees to provide financing for an energy project in exchange for a property owner's agreement to pay an annual assessment for a period not to exceed the weighted average useful life of the energy project;

(2) Clean energy assessment district means a district created by a municipality to provide financing for energy projects;

(3) Energy efficiency improvement means any acquisition, installation, or modification benefiting publicly or privately owned property that is designed to reduce the electric, gas, water, or other utility demand or consumption of the buildings on or to be constructed on such property or to promote the efficient and effective management of natural resources or storm water, including, but not limited to:

(a) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

(b) Storm windows and doors; multiglazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automated energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements;

(e) Caulking, weatherstripping, and air sealing;

(f) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

(g) Energy recovery systems, including, but not limited to, cogeneration and trigeneration systems;

(h) Daylighting systems;

(i) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;

(j) Facilities providing for water conservation or pollutant control;

(k) Roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements;

(l) Installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators, and elevators;

(m) Energy efficiency related items so long as the cost of the energy efficiency related items financed by the municipality does not exceed twenty-five percent of the total cost of the energy project; and

(n) Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;

(4) Energy efficiency related item means any repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement, including, but not limited to, structural support improvements and the repair or replacement of any building components, paved surfaces, or fixtures disrupted or altered by the installation of an energy efficiency improvement;

(5) Energy project means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system;

(6) Municipality means any county, city, or village in this state;

(7) Qualifying property means any of the following types of property located within a municipality:

(a) Agricultural property;

(b) Commercial property, including multifamily residential property comprised of more than four dwelling units;

(c) Industrial property; or

(d) Single-family residential property, which may include up to four dwelling units;

(8)(a) Renewable energy resource means a resource that naturally replenishes over time and that minimizes the output of toxic material in the conversion to energy. Renewable energy resource includes, but is not limited to, the following:

(i) Nonhazardous biomass;

(ii) Solar and solar thermal energy;

(iii) Wind energy;

(iv) Geothermal energy;

(v) Methane gas captured from a landfill or elsewhere; and

(vi) Photovoltaic systems; and

(b) Renewable energy resource does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass; and

(9) Renewable energy system means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator.

Source: Laws 2016, LB1012, § 3; R.S.Supp.,2016, § 18-3203; Laws 2017, LB625, § 3; Laws 2019, LB23, § 2.

Effective date May 2, 2019.

13-3204 Clean energy assessment district; creation; procedures; governing body; public hearing; notice; ordinance; resolution; contents; assessment contracts.

(1) Pursuant to the procedures provided in this section, a municipality may, from time to time, create one or more clean energy assessment districts. Such districts may be separate, overlapping, or coterminous and may be created anywhere within the municipality or its extraterritorial zoning jurisdiction, except that a county shall not create a district that includes any area within the corporate boundaries or extraterritorial zoning jurisdiction of any city or village located in whole or in part within such county. The governing body of the municipality shall be the governing body for any district so created.

(2) Prior to creating any clean energy assessment district, the municipality shall hold a public hearing at which the public may comment on the creation of such district. Notice of the public hearing shall be given by publication in a legal newspaper in or of general circulation in the municipality at least ten days prior to the hearing.

(3) After the public hearing, the municipality may create a clean energy assessment district by ordinance or, for counties, by resolution. The ordinance or resolution shall include:

(a) A finding that the financing of energy projects is a valid public purpose;

(b) A contract form to be used for assessment contracts between the municipality, the owner of the qualifying property, and, if applicable, a third-party lender governing the terms and conditions of financing and annual assessments;

(c) Identification of an official authorized to enter into assessment contracts on behalf of the municipality;

(d) An application process and eligibility requirements for financing energy projects;

(e) An explanation of how annual assessments will be made and collected;

(f) For energy projects involving residential property, a requirement that any interest rate on assessment installments must be a fixed rate;

(g) For energy projects involving residential property, a requirement that the repayment period for assessments must be according to a fixed repayment schedule;

(h) Information regarding the following, to the extent known, or procedures to determine the following in the future:

(i) Provisions for an adequate debt service reserve fund created under section 13-3209, if applicable;

(ii) Provisions for an adequate loss reserve fund created under section 13-3208; and

(iii) Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the municipality as a result of the program;

(i) A requirement that the term of the annual assessments not exceed the weighted average useful life of the energy project paid for by the annual assessments;

(j) A requirement that any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs;

(k) A requirement that, prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in subdivision (3)(d) of section 13-3205;

(l) Provisions for marketing and participant education;

(m) A requirement that the municipality obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended; and

(n) A requirement that the clean energy assessment district, with respect to single-family residential property, comply with the Property Assessed Clean Energy Act and with directives or guidelines issued by the Federal Housing Administration and the Federal Housing Finance Agency on or after January 1, 2016, relating to property assessed clean energy financing.

Source: Laws 2016, LB1012, § 4; R.S.Supp.,2016, § 18-3204; Laws 2017, LB625, § 4; Laws 2019, LB23, § 3.
Effective date May 2, 2019.

13-3205 Assessment contract; contents; recorded with register of deeds; municipality; duties; annual assessments; copy to county assessor and register of deeds.

(1) After passage of an ordinance or resolution under section 13-3204, a municipality may enter into an assessment contract with the record owner of qualifying property within a clean energy assessment district and, if applicable, with a third-party lender to finance an energy project on the qualifying property. The costs financed under the assessment contract may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees incurred by the owner pursuant to the installation. The assessment contract shall provide for the repayment of all such costs through annual assessments upon the qualifying property benefited by the energy project. A municipality may not impose an annual assessment under the Property Assessed Clean Energy Act unless such annual assessment is part of an assessment contract entered into under this section.

(2) Before entering into an assessment contract with an owner and, if applicable, a third-party lender under this section, the municipality shall verify:

(a) In all cases involving qualifying property other than single-family residential property, that the owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien established in section 13-3206. The consent and subordination agreement shall be in a form and substance acceptable to each mortgagee or beneficiary and shall be recorded in the office of the register of deeds of the county in which the qualifying property is located;

(b) That there are no delinquent taxes, special assessments, water or sewer charges, or any other assessments levied on the qualifying property; that there are no involuntary liens, including, but not limited to, construction liens, on the

qualifying property; and that the owner of the qualifying property is current on all debt secured by a mortgage or trust deed encumbering or otherwise securing the qualifying property;

(c) That there are no delinquent annual assessments on the qualifying property which were imposed to pay for a different energy project under the Property Assessed Clean Energy Act; and

(d) That there are sufficient resources to complete the energy project and that the energy project creates an estimated economic benefit, including, but not limited to, energy and water cost savings, maintenance cost savings, and other property operating savings expected during the financing period, which is equal to or greater than the principal cost of the energy project. The estimated economic benefit may be derived from federal, state, or third-party engineer certifications or from standards of energy or water savings associated with a particular energy efficiency improvement or set of energy efficiency improvements. A municipality may waive the requirements of this subdivision upon request of the owner of the qualifying property, and, if such request is denied, the owner may appeal the denial as provided by the ordinance or resolution adopted pursuant to section 13-3204 or as otherwise provided by local ordinance or resolution.

(3) Upon completion of the verifications required under subsection (2) of this section, an assessment contract may be executed by the municipality, the owner of the qualifying property, and, if applicable, a third-party lender and shall provide:

(a) A description of the energy project, including the estimated cost of the energy project and a description of the estimated savings prepared in accordance with standards acceptable to the municipality;

(b) A mechanism for:

(i) Verifying the final costs of the energy project upon its completion; and

(ii) Ensuring that any amounts advanced, financed, or otherwise paid by the municipality toward the costs of the energy project will not exceed the final cost of the energy project;

(c) An agreement by the property owner to pay annual assessments for a period not to exceed the weighted average useful life of the energy project;

(d) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be obligations upon future owners of the qualifying property; and

(e) An acknowledgment that no subdivision of qualifying property subject to the assessment contract shall be valid unless the assessment contract or an amendment to such contract divides the total annual assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

(4) The total annual assessments levied against qualifying property under an assessment contract shall not exceed the sum of the cost of the energy project, including any energy audits or inspections or portion thereof financed by the municipality, plus such administration fees, interest, and other financing costs reasonably required by the municipality.

(5) Nothing in the Property Assessed Clean Energy Act shall be construed to prevent a municipality from entering into more than one assessment contract

with respect to a single parcel of real property so long as each assessment contract relates to a separate energy project and subdivision (2)(c) of this section is not violated.

(6) The municipality shall provide a copy of each signed assessment contract to the county assessor and register of deeds of the county in which the qualifying property is located, and the register of deeds shall record the assessment contract with the qualifying property.

(7) Annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected at the same time and in the same manner as property taxes are levied and collected, except that an assessment contract for qualifying property other than single-family residential property may allow third-party lenders to collect annual assessments directly from the owner of the qualifying property in a manner prescribed in the assessment contract. Any third-party lender collecting annual assessments directly from the owner of the qualifying property shall notify the municipality within three business days if an annual assessment becomes delinquent.

(8) Collection of annual assessments shall only be sought from the original owners or subsequent purchasers of qualifying property subject to an assessment contract.

Source: Laws 2016, LB1012, § 5; R.S.Supp.,2016, § 18-3205; Laws 2017, LB625, § 5; Laws 2019, LB23, § 4.
Effective date May 2, 2019.

13-3210 Use of Interlocal Cooperation Act; public hearing; contract authorized.

(1) Two or more municipalities may enter into an agreement pursuant to the Interlocal Cooperation Act to jointly create, administer, or create and administer clean energy assessment districts. Notwithstanding subsection (1) of section 13-3204, the following provisions shall apply to jointly created districts:

(a) Such districts may be separate, overlapping, or coterminous and may be created anywhere within the municipalities that entered into the agreement or within their extraterritorial zoning jurisdictions, except that such districts shall not include any area within the corporate boundaries or extraterritorial zoning jurisdiction of any city or village unless such city or village is one of the municipalities that entered into the agreement; and

(b) The agreement shall provide for a governing body for any such district, which shall be made up of members of the governing bodies of the municipalities that entered into the agreement.

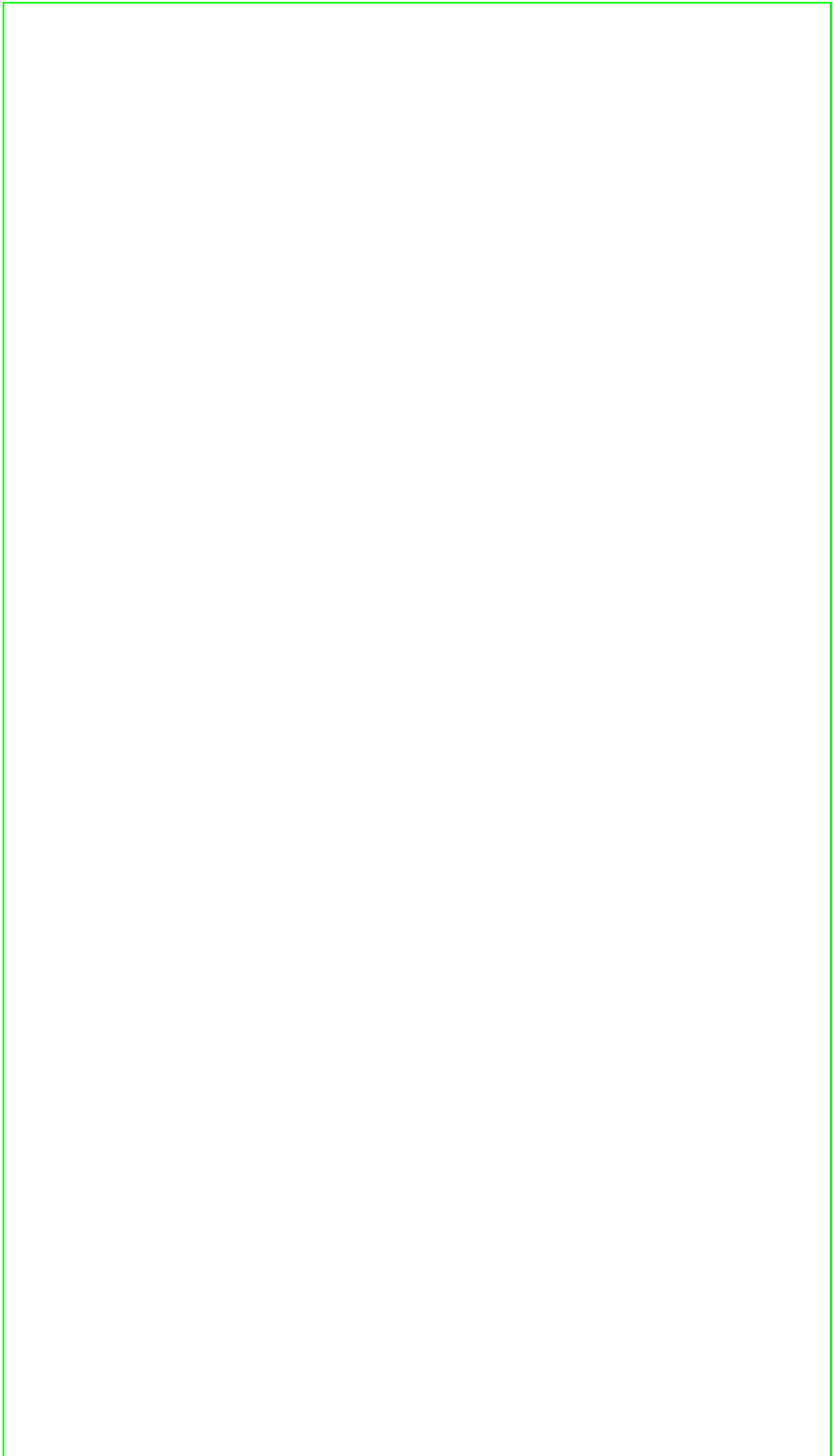
(2) If the creation of clean energy assessment districts is implemented jointly by two or more municipalities, a single public hearing held jointly by the cooperating municipalities is sufficient to satisfy the requirements of subsection (2) of section 13-3204.

(3) A municipality or municipalities may contract with a third party for the administration of clean energy assessment districts.

Source: Laws 2016, LB1012, § 10; R.S.Supp.,2016, § 18-3210; Laws 2017, LB625, § 10; Laws 2019, LB124, § 1.
Effective date March 22, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.



CHAPTER 14

CITIES OF THE METROPOLITAN CLASS

Article.

4. City Planning, Zoning. 14-407, 14-420.
5. Fiscal Management, Revenue, and Finances.
 - (a) General Provisions. 14-502.
18. Metropolitan Transit Authority. 14-1803, 14-1812.
21. Public Utilities. 14-2103 to 14-2139.

ARTICLE 4

CITY PLANNING, ZONING

Section

- 14-407. Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.
- 14-420. Request for change in zoning; notice; requirements; failure to give; effect.

14-407 Zoning; exercise of powers; planning board or official; notice to military installation; notice to neighborhood association.

(1) 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.

(2) 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.

(3) When the city is considering the adoption or amendment of a zoning ordinance, except for an amendment that serves only to correct a misspelling or other typographical error, the city shall notify any registered neighborhood association whose area of representation is located in whole or in part within the area that will be included in such zoning ordinance. Each neighborhood association desiring to receive such notice shall register with the city the area of representation of such association and provide the name of and contact information for the individual designated to receive notice on behalf of such association and the requested manner of service, whether by email or first-class or certified mail. The registration shall be in accordance with any rules and regulations adopted and promulgated by the city. The planning board shall deliver the notification to the neighborhood association (a) in the manner requested by the neighborhood association and (b) 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; Laws 2016, LB700, § 1; Laws 2019, LB196, § 1.
Effective date September 1, 2019.

Cross References

Planning board, extraterritorial member, see sections 14-373.01 and 14-373.02.

14-420 Request for change in zoning; notice; requirements; failure to give; effect.

(1) A city of the metropolitan class shall provide written notice of any properly filed request for a change in the zoning classification of a subject property to the owners of adjacent property in the manner set out in this section.

(2) Initial notice of the proposed zoning change on the subject property shall be sent to the owners of adjacent property 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, postmarked at least ten working days prior to the planning board public hearing on the proposed change. The initial notice shall also be provided at least ten working days prior to the hearing to any registered neighborhood association when the subject property is located within the boundary of the area of representation of such association in the manner requested by the association. Each neighborhood association desiring to receive such notice shall register with the city the area of representation of such association and provide the name of and contact information for the individual designated to receive notice on behalf of such association and the requested manner of service, whether by email or first-class or certified mail. The registration shall be in accordance with any rules and regulations adopted and promulgated by the city. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the planning board hearing.

(3) A second notice of the proposed zoning change on the subject property shall be sent to the same owners of adjacent 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, postmarked at least ten working days prior to the city council public hearing on the proposed change. Such notice shall describe the subject property or give its address, describe the nature of the zoning change requested, and contain the date, time, and location of the city council public hearing.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary in the event that the scheduled planning board or city council public hearing on the proposed zoning change is adjourned, continued, or postponed until a later date.

(5) The requirements of this section shall not apply to proposed changes in the text of the zoning code itself or any proposed changes in the zoning code affecting whole classes or classifications of property throughout the jurisdiction of the city.

(6) Except for a willful or deliberate failure to cause notice to be given, no zoning decision made by a city of the metropolitan class either to accept or reject a proposed zoning change with regard to a subject property 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. No action to challenge the validity of the acceptance or rejection of a

proposed zoning change on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the zoning change by the city council.

(7) 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 zoning change by the city council.

(8) For purposes of this section:

(a) Adjacent property shall mean any piece of real property any portion of which is located within three hundred feet of the nearest boundary line of the subject property or within one thousand feet of the nearest boundary line of the subject property if the proposed zoning change involves a heavy industrial district classification;

(b) Owner shall mean the owner of a piece of adjacent property as indicated on the records of the office of the register of deeds as provided to or made available to the city no earlier than the last business day before the twenty-fifth day preceding the planning board public hearing on the zoning change proposed for the subject property; and

(c) Subject property shall mean any tract of real property located within the boundaries of a city of the metropolitan class or within the zoning jurisdiction of a city of the metropolitan class which is the subject of a properly filed request for a change of its zoning classification.

Source: Laws 1993, LB 367, § 1; Laws 2014, LB679, § 1; Laws 2019, LB196, § 2.
Effective date September 1, 2019.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(a) GENERAL PROVISIONS

Section

14-502. Department funds; appropriation; miscellaneous expense fund; requirements; use.

(a) GENERAL PROVISIONS

14-502 Department funds; appropriation; miscellaneous expense fund; requirements; use.

The city council shall at the same time appropriate, from the remaining amount of tax levy of such year and from revenue to be derived from all other sources available for such purposes, money and credits of the city and set the same aside to funds to be designated department funds. The department funds shall be of the same number and of the same designation as the departments into which the government of the city is divided for administration under the commission plan of government. The amount so appropriated and set aside to each of the funds respectively shall be an amount deemed sufficient and necessary to take care of the expenses in such department for the fiscal year or

biennial period for which the appropriation is made. The amount thus appropriated to each of such departments respectively may be divided and subdivided for the purpose of expenditure as the council may direct, but shall be the maximum amount which may be appropriated to any such department for the fiscal year or biennial period, or which may be expended for the purpose of such department for the fiscal year or biennial period. Any transfer of duties or burdens of one department to another, after an appropriation has been made, shall carry with it a just and equitable pro rata proportion of the appropriation. The amounts so appropriated to the several department funds shall be used only for the purpose of paying the expenses and liabilities for which appropriated. The city council shall, at the time of the appropriation, estimate the total credits available from taxes levied and other sources for municipal purposes for the fiscal year or biennial period, and the amount remaining after deducting therefrom the amounts appropriated for statutory and department funds shall be the miscellaneous expense fund. The money and credits in the miscellaneous expense fund may be used from time to time to pay the miscellaneous expenses and obligations of the city for which an appropriation has not been made or which are not properly included within the purposes of the appropriation to any of the other funds.

Source: Laws 1921, c. 116, art. IV, § 2, p. 469; C.S.1922, § 3625; C.S.1929, § 14-502; R.S.1943, § 14-502; Laws 2000, LB 1116, § 11; Laws 2019, LB193, § 1.
Effective date September 1, 2019.

ARTICLE 18

METROPOLITAN TRANSIT AUTHORITY

Section

- 14-1803. Metropolitan transit authority; creation; members; appointment; jurisdiction; compensation; expenses; delegation of powers and duties.
14-1812. Metropolitan transit authority; board; name.

14-1803 Metropolitan transit authority; creation; members; appointment; jurisdiction; compensation; expenses; delegation of powers and duties.

(1) Any city of the metropolitan class may create by ordinance a transit authority to be managed and controlled by a board of five members which shall be appointed as provided in section 14-1813 and shall have full and exclusive jurisdiction and control over all facilities owned or acquired by such city for a public passenger transportation system. The governing body of such city, in the exercise of its discretion, shall find and determine in the ordinance creating such transit authority that its creation is expedient and necessary. The chairperson of such transit authority shall be paid as compensation for his or her services not more than six hundred dollars per month. Each other member of such transit authority shall be paid as compensation for his or her services not more than five hundred dollars per month. All salaries and compensation shall be obligations against and paid solely from the revenue of such transit authority. Members of such transit authority shall also be entitled to reimbursement for expenses paid or incurred in the performance of the duties imposed upon them by the Transit Authority Law with reimbursement for mileage to be made at the rate provided in section 81-1176. The board may delegate to one or more of the members or to officers, agents, and employees of the authority such powers and duties as it may deem proper.

(2) Any transit authority created pursuant to such law shall have and retain full and exclusive jurisdiction and control over all public passenger transportation systems in such city, excluding taxicabs, transportation network companies, and interstate railroad systems in such city, and over all public passenger transportation systems operated by such transit authority in any county, city, or village served by the authority, with the right and duty to charge and collect revenue for the operation and maintenance of such systems and for the benefit of the holders of any of its bonds or other liabilities. Unless such authority elects to convert to a regional metropolitan transit authority under the Regional Metropolitan Transit Authority Act, if such authority ceases to exist, its rights and properties shall pass to and vest in such city of the metropolitan class.

Source: Laws 1957, c. 23, § 3, p. 159; Laws 1972, LB 1275, § 3; Laws 1973, LB 69, § 1; Laws 1981, LB 204, § 17; Laws 1989, LB 309, § 1; Laws 1996, LB 1011, § 5; Laws 2003, LB 720, § 2; Laws 2019, LB492, § 33.

Effective date September 1, 2019.

Cross References

Regional Metropolitan Transit Authority Act, see section 18-801.

14-1812 Metropolitan transit authority; board; name.

Unless the authority elects to convert into a regional metropolitan transit authority pursuant to the Regional Metropolitan Transit Authority Act, the governing body of the authority shall be a board to be known as The Transit Authority of, filling out the blank with the name of the city, which shall consist of five members, to be appointed as provided in section 14-1813. If at any time such authority elects to convert into a regional metropolitan transit authority, then as of the effective date of such conversion, the governing body of a transit authority established under the Transit Authority Law shall become a board known as the Regional Metropolitan Transit Board of (filling out the blank with the name coinciding with the name of the regional metropolitan transit authority determined pursuant to section 18-804). Thereafter, notwithstanding any provision in the Transit Authority Law to the contrary, such board shall consist of members as determined under and be governed by and subject to the Regional Metropolitan Transit Authority Act.

Source: Laws 1957, c. 23, § 12, p. 169; Laws 1972, LB 1275, § 12; Laws 1973, LB 69, § 3; Laws 2019, LB492, § 34.

Effective date September 1, 2019.

Cross References

Regional Metropolitan Transit Authority Act, see section 18-801.

ARTICLE 21

PUBLIC UTILITIES

Section

- 14-2103. Board of directors; territory outside city; participation in election; filings; where made.
- 14-2105. Board of directors; meetings.
- 14-2138. Utilities district; payment to city of the metropolitan class; allocation.
- 14-2139. Utilities district; payment to cities or villages; allocation.

14-2103 Board of directors; territory outside city; participation in election; filings; where made.

Whenever a metropolitan utilities district is extended to include sanitary and improvement districts, unincorporated area, towns, villages, or territory lying outside the corporate limits of cities of the metropolitan class or so extended as to include sanitary and improvement districts, unincorporated area, towns, or villages in an adjoining county or counties, then such sanitary and improvement districts, unincorporated area, towns, or villages shall have a right to participate in the nomination and in the election of members of the board of directors of the metropolitan utilities district. The election commissioner or county clerk of each of the counties in which ballots are cast pursuant to this section shall transmit, by mail or otherwise, to the Secretary of State, a copy of the abstract of the votes cast for members of the board of directors. The Secretary of State shall in due course deliver to the candidate receiving the highest number of votes a certificate of election as a member of the board of directors. All filings for such office shall be made with the Secretary of State.

Source: Laws 1921, c. 109, § 1, p. 385; C.S.1922, § 3748; C.S.1929, § 14-1004; R.S.1943, § 14-1004; Laws 1961, c. 32, § 2, p. 152; R.S.1943, (1991), § 14-1004; Laws 1992, LB 746, § 3; Laws 1994, LB 76, § 478; Laws 2014, LB1014, § 2; Laws 2019, LB411, § 19.

Operative date September 1, 2019.

14-2105 Board of directors; meetings.

Regular meetings of the board of directors shall be held each calendar month at such hour and on such date as the board may designate and at such other stated times as shall be fixed in the bylaws. Special meetings of the board may be held at any time at the call of the chairperson or at the request of any two members filed in writing with the secretary. All meetings of the board, any of its committees, or committees of its employees shall be public.

Source: Laws 1913, c. 143, § 5, p. 351; R.S.1913, § 4247; C.S.1922, § 3750; C.S.1929, § 14-1006; R.S.1943, § 14-1006; R.S.1943, (1991), § 14-1006; Laws 1992, LB 746, § 5; Laws 2019, LB411, § 20.

Operative date May 18, 2019.

14-2138 Utilities district; payment to city of the metropolitan class; allocation.

The metropolitan utilities district shall pay to the city of the metropolitan class a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water and gas sold by such district within such city, except that retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sum shall be paid on a quarterly basis, the last quarterly payment to be made not later than the thirtieth day of January of the next succeeding year, except that annual payments to such city shall not be less than five hundred thousand dollars. Such city shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by

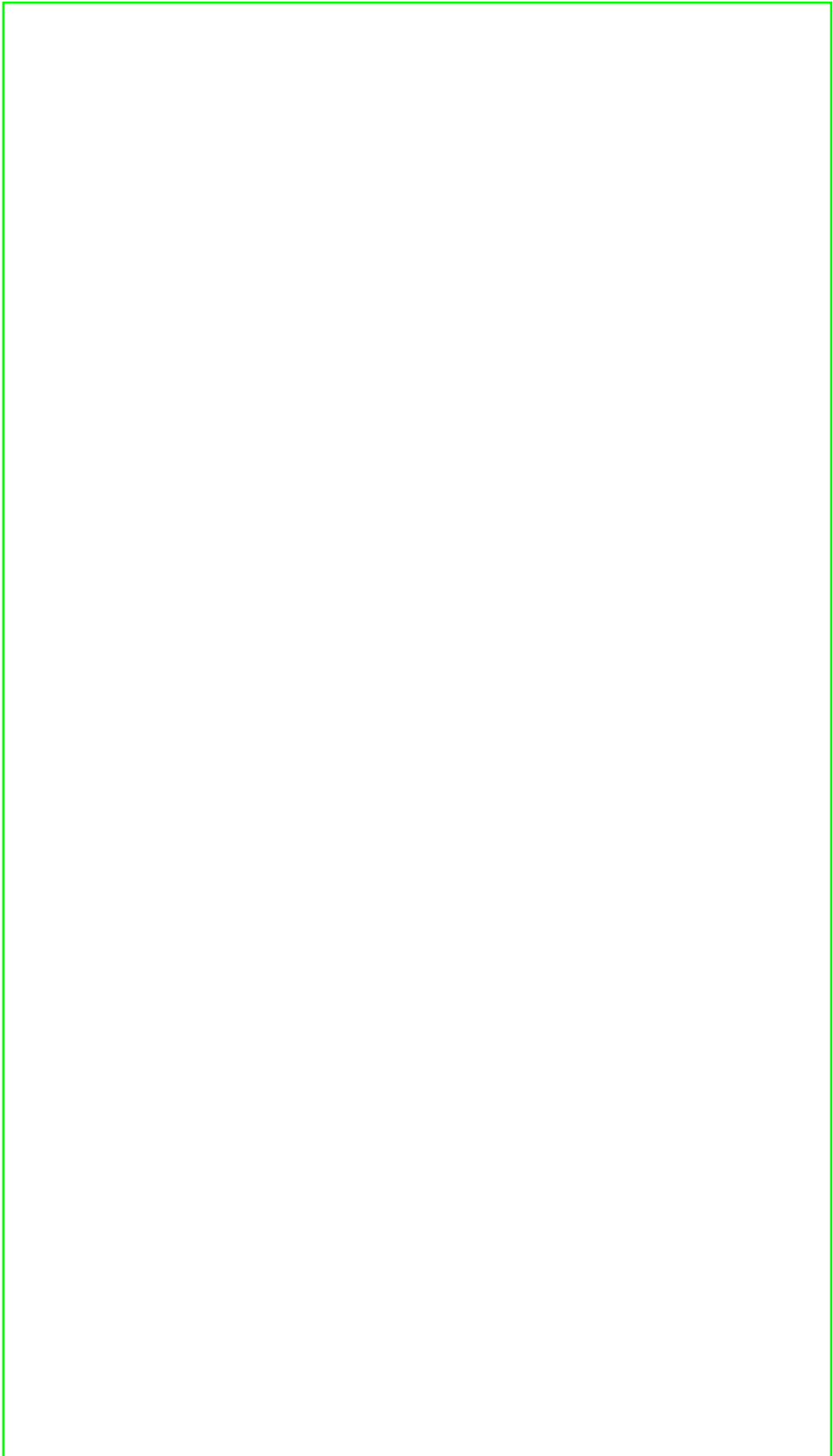
this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1919, c. 187, § 4, p. 421; C.S.1922, § 3774; C.S.1929, § 14-1030; Laws 1943, c. 36, § 23, p. 177; R.S.1943, § 14-1041; Laws 1945, c. 19, § 5, p. 125; Laws 1947, c. 21, § 2, p. 112; Laws 1961, c. 33, § 1, p. 153; Laws 1967, c. 47, § 1, p. 179; R.S.1943, (1991), § 14-1041; Laws 1992, LB 746, § 38; Laws 2014, LB867, § 4; Laws 2019, LB476, § 1.
Effective date September 1, 2019.

14-2139 Utilities district; payment to cities or villages; allocation.

A metropolitan utilities district shall pay to every city or village of any class, other than metropolitan, in which such district sells water or gas, or both, at retail, a sum equivalent to two percent of the annual gross revenue derived from all retail sales of water or gas, or both, sold by such district within the city or village, except that retail sales of gas shall not include the retail sale of natural gas used as vehicular fuel. Such sums shall be paid not later than the thirtieth day of January of the next succeeding year. Such cities or villages shall not levy or collect any license, occupation, or excise tax upon or from such district. All payments provided by this section shall be allocated by the district among the several utilities operated by it upon such basis as the district shall determine.

Source: Laws 1967, c. 47, § 2, p. 179; R.S.1943, (1991), § 14-1042; Laws 1992, LB 746, § 39; Laws 2014, LB867, § 5; Laws 2019, LB476, § 2.
Effective date September 1, 2019.



**CHAPTER 16
CITIES OF THE FIRST CLASS**

Article.

- 1. Incorporation, Extensions, Additions, Wards. 16-115 to 16-119.
- 2. General Powers. 16-238.
- 3. Officers, Elections, Employees. 16-304 to 16-327.
- 4. Council and Proceedings. 16-401 to 16-406.
- 5. Contracts and Franchises. 16-501 to 16-503.
- 6. Public Improvements.
 - (a) Condemnation Proceedings. 16-606.
 - (b) Streets. 16-609 to 16-654.
 - (d) Sidewalks. 16-661 to 16-665.
 - (e) Water, Sewer, and Drainage Districts. 16-671.01, 16-672.
 - (f) Storm Sewer Districts. 16-672.07.
 - (g) Public Utilities. 16-674 to 16-693.
 - (h) Parks. 16-697.
 - (i) Markets. 16-699.
 - (j) Public Buildings. 16-6,100.
- 7. Fiscal Management, Revenue, and Finances. 16-702 to 16-728.
- 8. Offstreet Parking. 16-808.

**ARTICLE 1
INCORPORATION, EXTENSIONS, ADDITIONS, WARDS**

Section

- 16-115. Corporate name and seal; service of process.
- 16-118. Annexation of land; deemed contiguous; when.
- 16-119. Annexation; extraterritorial property use; continuation.

16-115 Corporate name and seal; service of process.

The corporate name of each city of the first class shall be the City of, and all process whatever affecting any such city shall be served in the manner provided for service of a summons in a civil action. The city shall procure and keep a seal with such emblem and device as it may think proper. Such seal may be either an engraved or ink stamp seal. It shall have included thereon the City of, together with date of incorporation, which shall be the seal of the city, and no other seal shall be used by the city. The impression or representation of the seal by stamp shall be sufficient sealing in all cases where sealing is required. An impression or representation of such seal shall be filed in the office of the Secretary of State, together with a resolution of the city council that the same has been duly adopted and is the seal of such city.

Source: Laws 1901, c. 18, § 122, p. 305; R.S.1913, § 4815; C.S.1922, § 3983; C.S.1929, § 16-112; R.S.1943, § 16-115; Laws 1983, LB 447, § 5; Laws 2019, LB194, § 1.
Effective date September 1, 2019.

16-118 Annexation of land; deemed contiguous; when.

For purposes of sections 16-117 and 16-130, lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, embankment, strip, or parcel of land not more than two hundred feet wide lies between the same and the corporate limits.

Source: Laws 1967, c. 64, § 2, p. 214; Laws 2019, LB194, § 2.
Effective date September 1, 2019.

16-119 Annexation; extraterritorial property use; continuation.

Any extraterritorial zoning regulations, property use regulations, or other laws, codes, rules, or regulations imposed upon any annexed lands by a city of the first class before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 64, § 3, p. 214; Laws 2016, LB704, § 8; Laws 2019, LB194, § 3.
Effective date September 1, 2019.

ARTICLE 2

GENERAL POWERS

Section

16-238. Spread of disease; regulation; board of health; creation; powers; duties.

16-238 Spread of disease; regulation; board of health; creation; powers; duties.

A city of the first class may make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city. In cities with a commission plan of government as provided in the Municipal Commission Plan of Government Act and cities with a city manager plan of government as provided in the City Manager Plan of Government Act, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, and two other members. In all other cities, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, the president of the city council, and one other member. A majority of such board shall constitute a quorum and shall enact rules and regulations, having the force and effect of law, to safeguard the health of the people of such city and prevent nuisances and unsanitary conditions, enforce the same, and provide fines and punishments for the violation of such rules and regulations.

Source: Laws 1901, c. 18, § 48, XLIV, p. 257; R.S.1913, § 4854; Laws 1919, c. 37, § 1, p. 118; C.S.1922, § 4022; C.S.1929, § 16-239; R.S.1943, § 16-238; Laws 1977, LB 190, § 1; Laws 1993, LB 119, § 1; Laws 1994, LB 1019, § 1; Laws 2016, LB704, § 38; Laws 2019, LB193, § 2.
Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

Municipal Commission Plan of Government Act, see section 19-401.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section

- 16-304. City council; members; bond or insurance; payment of premium; amount; conditions.
- 16-305. Officers and employees; merger of offices or employment; salaries.
- 16-308. Administrator, departments, and other appointed officers; enumerated; appointment and removal.
- 16-309. Appointed officers; terms.
- 16-312. Mayor; powers and duties.
- 16-313. Mayor; veto power; passage over veto.
- 16-314. Mayor; legislative recommendations; jurisdiction.
- 16-316. Mayor; pardons; remission of fines.
- 16-317. City clerk; duties.
- 16-318. City treasurer; bond or insurance; premium; duties; reports.
- 16-319. City attorney; duties; compensation; additional legal assistance.
- 16-320. City engineer; duties.
- 16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.
- 16-321.01. Municipal bidding procedure; waiver; when.
- 16-322. Special engineer; when employed.
- 16-323. Chief of police; police officers; powers and duties.
- 16-324. Street commissioner; duties.
- 16-326. Elective officers; compensation; change during term prohibited; exception.
- 16-327. Officers; reports required.

16-304 City council; members; bond or insurance; payment of premium; amount; conditions.

Each city council member of a city of the first class, before entering upon the duties of his or her office, shall be required to give bond or evidence of equivalent insurance to the city. The bond shall be with two or more good and sufficient sureties or some responsible surety company. If by two sureties, they shall each justify that he or she is worth at least two thousand dollars over and above all debts and exemptions. Such bonds or evidence of equivalent insurance shall be in the sum of one thousand dollars, shall be conditioned for the faithful discharge of the duties of the city council member giving such bond or insurance, and shall be further conditioned that if the city council member shall vote for any expenditure or appropriation of money or creation of any liability in excess of the amount allowed by law, such city council member, and the sureties signing such bond, shall be liable thereon. The bond shall be filed with the city clerk and approved by the mayor, and upon the approval, the city may pay the premium for such bond. Any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the city council member voting for and the mayor approving such liability, obligation, or debt, and not the debt, liability, or obligation of the city. Voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office for which such city council member or mayor may be removed from office.

Source: Laws 1901, c. 18, § 12, p. 232; Laws 1903, c. 19, § 1, p. 232; Laws 1907, c. 13, § 1, p. 106; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 223; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 202; C.S.1929, § 16-302; R.S.1943, § 16-304; Laws 1965, c. 49, § 1, p.

250; Laws 1979, LB 80, § 23; Laws 2007, LB347, § 9; Laws 2016, LB704, § 50; Laws 2019, LB194, § 4.
Effective date September 1, 2019.

16-305 Officers and employees; merger of offices or employment; salaries.

All officers and employees of a city of the first class shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment, subject to the limitations set forth in this section. The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The city manager in a city under the city manager plan of government as provided in the City Manager Plan of Government Act may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time. The offices or employments so merged and combined shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

Source: Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 224; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 203; C.S.1929, § 16-302; R.S.1943, § 16-305; Laws 1984, LB 368, § 1; Laws 1990, LB 756, § 1; Laws 1990, LB 931, § 2; Laws 1991, LB 12, § 1; Laws 1994, LB 76, § 486; Laws 2016, LB704, § 51; Laws 2019, LB193, § 3; Laws 2019, LB194, § 5.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB193, section 3, with LB194, section 5, to reflect all amendments.

Cross References

City Manager Plan of Government Act, see section 19-601.

16-308 Administrator, departments, and other appointed officers; enumerated; appointment and removal.

Each city of the first class shall have such departments and appointed officers as shall be established by ordinance passed by the city council, which shall include a city clerk, treasurer, engineer, and attorney, and such officers as may otherwise be required by law. Except as provided in the City Manager Plan of Government Act, the mayor may, with the approval of the city council, appoint the necessary officers, as well as an administrator, who shall perform such duties as prescribed by ordinance. Except as provided in the City Manager Plan of Government Act, the appointed officers may be removed at any time by the

mayor with approval of a majority of the city council. The office of administrator may not be held by the mayor. The appointed administrator may concurrently hold any other appointive office provided for in this section and section 16-325.

Source: Laws 1901, c. 18, § 14, p. 233; Laws 1903, c. 19, § 2, p. 233; Laws 1907, c. 13, § 1, p. 107; R.S.1913, § 4874; Laws 1917, c. 95, § 1, p. 252; Laws 1921, c. 164, § 1, p. 657; C.S.1922, § 4042; C.S.1929, § 16-304; R.S.1943, § 16-308; Laws 1953, c. 26, § 1, p. 110; Laws 1961, c. 41, § 1, p. 171; Laws 1963, c. 61, § 2, p. 254; Laws 1974, LB 1024, § 1; Laws 1975, LB 93, § 1; Laws 1976, LB 782, § 12; Laws 2016, LB704, § 53; Laws 2019, LB193, § 4. Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

16-309 Appointed officers; terms.

All officers of a city of the first class appointed by the mayor and confirmed by the city council shall hold the office to which they may be appointed until the end of the mayor's term of office and until their successors are appointed and qualified, unless sooner removed or the ordinance creating the office is repealed, or as otherwise provided by law.

Source: Laws 1901, c. 18, § 15, p. 233; Laws 1903, c. 19, § 3, p. 234; R.S.1913, § 4875; C.S.1922, § 4043; C.S.1929, § 16-305; R.S. 1943, § 16-309; Laws 1997, LB 734, § 1; Laws 2016, LB704, § 54; Laws 2019, LB194, § 6. Effective date September 1, 2019.

16-312 Mayor; powers and duties.

The mayor of a city of the first class shall preside at all the meetings of the city council and shall have the right to vote when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council. He or she shall have the superintending control of all the officers and affairs of the city and shall take care that the ordinances of the city and the provisions of law relating to cities of the first class are complied with. He or she may administer oaths and shall sign the commissions and appointments of all the officers appointed in the city.

Source: Laws 1901, c. 18, § 19, p. 234; R.S.1913, § 4878; C.S.1922, § 4046; C.S.1929, § 16-308; R.S.1943, § 16-312; Laws 1957, c. 55, § 2, p. 266; Laws 1980, LB 662, § 1; Laws 1989, LB 790, § 1; Laws 2016, LB704, § 56; Laws 2019, LB194, § 7. Effective date September 1, 2019.

16-313 Mayor; veto power; passage over veto.

The mayor of a city of the first class shall have the power to approve or veto any ordinance passed by the city council and to approve or veto any order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim. If the mayor approves the ordinance, order, bylaw, resolution, contract, or claim, he or she shall sign it, and it shall become effective. If the mayor vetoes the ordinance, order, bylaw, resolution, contract, or any item or

items of appropriations or claims, he or she shall return it to the city council stating that the measure is vetoed. The mayor may issue the veto at the meeting at which the measure passed or within seven calendar days after the meeting. If the mayor issues the veto after the meeting, the mayor shall notify the city clerk of the veto in writing. The city clerk shall notify the city council in writing of the mayor's veto. Any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim vetoed by the mayor, may be passed over his or her veto by a vote of two-thirds of all the members elected to the city council, notwithstanding his or her veto. If the mayor neglects or refuses to sign any ordinance, order, bylaw, resolution, award of or vote to enter into any contract, or the allowance of any claim, but fails to veto the measure within the time required by this section, the measure shall become effective without his or her signature. The mayor may veto any item or items of any appropriation bill or any claims bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the city council over the veto as in other cases.

Source: Laws 1901, c. 18, § 20, p. 234; R.S.1913, § 4879; C.S.1922, § 4047; C.S.1929, § 16-309; R.S.1943, § 16-313; Laws 2014, LB803, § 1; Laws 2016, LB704, § 57; Laws 2019, LB194, § 8.
Effective date September 1, 2019.

16-314 Mayor; legislative recommendations; jurisdiction.

The mayor of a city of the first class shall, from time to time, communicate to the city council such information and recommend such measures as in his or her opinion may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and may have such jurisdiction as may be invested in him or her by ordinance over all places within the extraterritorial zoning jurisdiction of the city, for the enforcement of health or quarantine ordinances and the regulation thereof.

Source: Laws 1901, c. 18, § 21, p. 235; Laws 1901, c. 19, § 2, p. 307; R.S.1913, § 4880; C.S.1922, § 4048; C.S.1929, § 16-310; R.S. 1943, § 16-314; Laws 2016, LB704, § 58; Laws 2019, LB194, § 9.
Effective date September 1, 2019.

16-316 Mayor; pardons; remission of fines.

The mayor of a city of the first class shall have power after conviction to remit fines and forfeitures, and to grant reprieves and pardons for all offenses arising under the ordinances of the city.

Source: Laws 1901, c. 18, § 23, p. 235; R.S.1913, § 4882; C.S.1922, § 4050; C.S.1929, § 16-312; R.S.1943, § 16-316; Laws 2019, LB194, § 10.
Effective date September 1, 2019.

16-317 City clerk; duties.

The city clerk of a city of the first class shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the city council. After the period of time specified by the State Records Administrator pursuant to the Records Management Act, the city clerk may transfer such journal of the proceedings of the city council to the State Archives of the

Nebraska State Historical Society for permanent preservation. He or she shall also perform such other duties as may be required by the ordinances of the city.

Source: Laws 1901, c. 18, § 25, p. 236; R.S.1913, § 4883; C.S.1922, § 4051; C.S.1929, § 16-313; R.S.1943, § 16-317; Laws 1973, LB 224, § 4; Laws 2013, LB112, § 1; Laws 2016, LB704, § 59; Laws 2019, LB194, § 11.

Effective date September 1, 2019.

Cross References

Records Management Act, see section 84-1220.

16-318 City treasurer; bond or insurance; premium; duties; reports.

(1) The city treasurer of a city of the first class shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the city council at any time to be in his or her hands belonging to the city. The city treasurer shall be the custodian of all money belonging to the city. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer.

(2) The city treasurer of a city of the first class shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. The city treasurer shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the city clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the city council or its committee that he or she has such funds in his or her custody or under his or her control. If the city treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the city council, the mayor with the consent of the city council may consider this failure as cause to remove the city treasurer from office.

(3) The city treasurer of a city of the first class shall keep a record of all outstanding bonds against the city, showing the number and amount of each bond, for and to whom the bonds were issued, and the date upon which any bond is purchased, paid, or canceled. He or she shall accompany the annual statement submitted pursuant to section 19-1101 with a description of the bonds issued and sold in that year and the terms of sale, with every item of expense thereof.

(4) The city treasurer of a city of the first class may employ and appoint a delinquent tax collector, who shall be allowed a percentage upon his or her collections to be fixed by the city council, not to exceed the fees allowed by law to the county treasurer for like services. Upon taxes collected by such delinquent tax collector, the city treasurer shall receive no fees.

(5) The city treasurer of a city of the first class shall prepare all special assessment lists and shall collect all special assessments.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S. 1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10; Laws 2013, LB112, § 2; Laws 2016, LB704, § 60; Laws 2019, LB194, § 12.
Effective date September 1, 2019.

16-319 City attorney; duties; compensation; additional legal assistance.

The city attorney of a city of the first class shall be the legal advisor of the city council and other city officers. The city attorney shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the city, or that may be ordered by the city council. He or she shall attend meetings of the city council and give them his or her opinion upon any matters submitted to him or her, either orally or in writing as may be required. The mayor and city council shall have the right to pay the city attorney additional compensation for legal services performed by him or her for the city or to employ additional legal assistance and to pay for such legal assistance out of the funds of the city. Whenever the mayor and city council have by ordinance so authorized, the board of public works shall have the right to pay the city attorney additional compensation for legal services performed by him or her for it or to employ additional legal assistance other than the city attorney and pay such legal assistance out of funds disbursed under the orders of the board of public works.

Source: Laws 1901, c. 18, § 27, p. 237; R.S.1913, § 4885; C.S.1922, § 4053; C.S.1929, § 16-315; R.S.1943, § 16-319; Laws 1947, c. 26, § 1, p. 127; Laws 1955, c. 30, § 1, p. 136; Laws 2016, LB704, § 61; Laws 2019, LB194, § 13.
Effective date September 1, 2019.

16-320 City engineer; duties.

The city engineer of a city of the first class shall make a record of the minutes of his or her surveys and of all work done for the city, including sewers, extension of water systems and heating systems, electric light and sewerage systems, and power plants, and accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records and belong to the city and be turned over to his or her successor.

Source: Laws 1901, c. 18, § 28, p. 237; R.S.1913, § 4886; C.S.1922, § 4054; C.S.1929, § 16-316; R.S.1943, § 16-320; Laws 2016, LB704, § 62; Laws 2019, LB194, § 14.
Effective date September 1, 2019.

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 of a city of the first class 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 systems, waterworks, power plants, public heating systems, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the city 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 systems, 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 systems, 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 city council. In advertising for bids as provided in subsections (4) and (6) of this section, the city 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 systems, 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 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 city 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 city, 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; Laws 2016, LB704, § 63; Laws 2019, LB194, § 15.
Effective date September 1, 2019.

16-321.01 Municipal bidding procedure; waiver; when.

Any municipal bidding procedure may be waived by the city council or board of public works of a city of the first class (1) when materials or equipment are purchased at the same price and from the same seller as materials or equipment which have formerly been obtained pursuant to the state bidding procedure in sections 81-145 to 81-162, (2) when the contract is negotiated directly with a sheltered workshop pursuant to section 48-1503, or (3) when required to comply with any federal grant, loan, or program.

Source: Laws 1997, LB 238, § 2; Laws 2011, LB335, § 3; Laws 2019, LB194, § 16.
Effective date September 1, 2019.

16-322 Special engineer; when employed.

The mayor and city council of a city of the first class may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity and serve in all respects as though the same had been made by the city engineer.

Source: Laws 1901, c. 18, § 98, p. 297; R.S.1913, § 4888; C.S.1922, § 4056; C.S.1929, § 16-318; R.S.1943, § 16-322; Laws 2016, LB704, § 64; Laws 2019, LB194, § 17.
Effective date September 1, 2019.

16-323 Chief of police; police officers; powers and duties.

The chief of police of a city of the first class shall have the immediate superintendence of the police. He or she and the police officers shall have the power and the duty to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as a county sheriff and to keep such offenders in the city prison or other place to prevent their escape until a trial or examination may be had before the proper officer. The chief of police and police officers shall have the same power as the county sheriff in relation to all criminal matters arising out of a violation of a city ordinance and all process issued by the county court in connection with a violation of a city ordinance.

Source: Laws 1901, c. 18, § 30, p. 238; R.S.1913, § 4889; C.S.1922, § 4057; C.S.1929, § 16-319; R.S.1943, § 16-323; Laws 1972, LB 1032, § 103; Laws 1979, LB 80, § 26; Laws 1988, LB 1030, § 4; Laws 2016, LB704, § 65; Laws 2019, LB194, § 18.
Effective date September 1, 2019.

Cross References

Ticket quota requirements, prohibited, see section 48-235.

16-324 Street commissioner; duties.

The street commissioner of a city of the first class shall be subject to the orders of the mayor and city council by resolution, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the city council may require.

Source: Laws 1901, c. 18, § 31, p. 238; R.S.1913, § 4890; C.S.1922, § 4058; C.S.1929, § 16-320; R.S.1943, § 16-324; Laws 1961, c. 42, § 1, p. 173; Laws 2016, LB704, § 66; Laws 2019, LB194, § 19.
Effective date September 1, 2019.

16-326 Elective officers; compensation; change during term prohibited; exception.

The salary of any elective officer of any city of the first class shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to the city council, or to a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he or she was elected when, during the same time, the salary has been increased.

Source: Laws 1901, c. 18, § 32, p. 238; R.S.1913, § 4892; C.S.1922, § 4060; C.S.1929, § 16-322; R.S.1943, § 16-326; Laws 1969, c. 75, § 2, p. 404; Laws 1972, LB 943, § 1; Laws 2016, LB704, § 68; Laws 2019, LB194, § 20.
Effective date September 1, 2019.

16-327 Officers; reports required.

The mayor or city council of a city of the first class shall have power, when he, she, or it deems it necessary, to require any officer of the city to exhibit his or her accounts or other papers and make reports to the city council, in writing, touching any subject or matter it may require pertaining to the office.

Source: Laws 1901, c. 18, § 33, p. 239; R.S.1913, § 4893; C.S.1922, § 4061; C.S.1929, § 16-323; R.S.1943, § 16-327; Laws 1979, LB 80, § 27; Laws 2016, LB704, § 69; Laws 2019, LB194, § 21.
Effective date September 1, 2019.

ARTICLE 4 COUNCIL AND PROCEEDINGS

Section

- 16-401. City council; meetings, regular and special; quorum.
- 16-402. City council; president; acting president; duties.
- 16-403. City council; ordinances; passage; proof; publication.
- 16-404. City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.
- 16-405. City council; ordinances; style; publication; emergency ordinances.
- 16-406. City council; testimony; power to compel; oaths.

16-401 City council; meetings, regular and special; quorum.

Regular meetings of the city council of a city of the first class shall be held at such times as may be fixed by ordinance and special meetings whenever called by the mayor or any four city council members. A majority of all the members elected to the city council shall constitute a quorum for the transaction of any business, except as otherwise required by law, but a less number may adjourn, from time to time, and compel the attendance of absent members. An affirmative vote of not less than one-half of the elected members shall be required for the transaction of any business.

Source: Laws 1901, c. 18, § 16, p. 233; R.S.1913, § 4894; C.S.1922, § 4062; C.S.1929, § 16-401; R.S.1943, § 16-401; Laws 1975, LB 118, § 1; Laws 1987, LB 652, § 1; Laws 2016, LB704, § 70; Laws 2019, LB194, § 22.
Effective date September 1, 2019.

16-402 City council; president; acting president; duties.

The city council of a city of the first class shall elect one of the city council members as president of the city council, and he or she shall preside at all meetings of the city council in the absence of the mayor. In the absence of the president, the city council members shall elect one of their own body to occupy the place temporarily, who shall be styled acting president of the city council. The president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the city council, and all acts of the president or acting president while so acting shall be as binding upon the city council and upon the city as if done by the mayor.

Source: Laws 1901, c. 18, § 53, p. 259; R.S.1913, § 4895; C.S.1922, § 4063; C.S.1929, § 16-402; R.S.1943, § 16-402; Laws 1987, LB 652, § 2; Laws 2016, LB704, § 71; Laws 2019, LB194, § 23.
Effective date September 1, 2019.

16-403 City council; ordinances; passage; proof; publication.

All ordinances of a city of the first class shall be passed pursuant to such rules and regulations as the city council may provide, and all such ordinances may be proved by the certificate of the city clerk under the seal of the city. When printed or published in book or pamphlet form and purporting to be published by authority of the city, such ordinances shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of such ordinance shall be sufficiently proved by a certificate under the seal of the city from the city clerk showing that such ordinance was passed and approved, and when and in what paper the same was published, and when and by whom and where the same was posted. When ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Source: Laws 1901, c. 18, § 46, p. 244; R.S.1913, § 4896; C.S.1922, § 4064; C.S.1929, § 16-403; R.S.1943, § 16-403; Laws 2016, LB704, § 72; Laws 2019, LB194, § 24.
Effective date September 1, 2019.

16-404 City council; ordinances, resolutions, or orders; procedure for passage; vote of mayor, when; amendments; revision ordinances.

(1) All ordinances and resolutions or orders for the appropriation or payment of money in a city of the first class shall require for their passage or adoption the concurrence of a majority of all members elected to the city council. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council.

(2) Ordinances of a general or permanent nature in a city of the first class shall be read by title on three different days unless three-fourths of the city council members vote to suspend this requirement, except that in a city having a commission plan of government such requirement may be suspended by a three-fifths majority vote. Regardless of the form of government, such requirement shall not be suspended for any ordinance for the annexation of territory or the redrawing of boundaries for city council election districts or wards. In case such requirement is suspended, the ordinances shall be read by title or number and then moved for final passage. Three-fourths of the city council members may require a reading of any such ordinance in full before enactment under either procedure set out in this section, except that in a city having a commission plan of government, such reading may be required by a three-fifths majority vote.

(3) Ordinances in a city of the first class shall contain no subject which is not clearly expressed in the title, and, except as provided in section 19-915, no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section so amended is repealed, except that:

(a) For an ordinance revising all the ordinances of a city of the first class, the only title necessary shall be An ordinance of the city of, revising all the ordinances of the city. Under such title all the ordinances may be revised in

sections and chapters or otherwise, may be corrected, added to, and any part suppressed, and may be repealed with or without a saving clause as to the whole or any part without other title; and

(b) For an ordinance used solely to revise ordinances or code sections or to enact new ordinances or code sections in order to adopt statutory changes made by the Legislature which are specific and mandatory and bring the ordinances or code sections into conformance with state law, the title need only state that the ordinance revises those ordinances or code sections affected by or enacts ordinances or code sections generated by legislative changes. Under such title, all such ordinances or code sections may be revised, repealed, or enacted in sections and chapters or otherwise by a single ordinance without other title.

Source: Laws 1901, c. 18, § 37, p. 240; Laws 1903, c. 19, § 5, p. 235; R.S.1913, § 4897; C.S.1922, § 4065; C.S.1929, § 16-404; R.S. 1943, § 16-404; Laws 1961, c. 43, § 1, p. 174; Laws 1969, c. 108, § 2, p. 510; Laws 1972, LB 1235, § 1; Laws 1975, LB 172, § 1; Laws 1980, LB 662, § 2; Laws 1989, LB 790, § 2; Laws 1990, LB 966, § 1; Laws 1994, LB 630, § 2; Laws 2003, LB 365, § 1; Laws 2016, LB704, § 73; Laws 2018, LB865, § 3; Laws 2019, LB193, § 5; Laws 2019, LB194, § 25.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB193, section 5, with LB194, section 25, to reflect all amendments.

Cross References

For other provisions for revision of ordinances, see section 16-247.

16-405 City council; ordinances; style; publication; emergency ordinances.

The style of ordinances of a city of the first class shall be: “Be it ordained by the mayor and city council of the city of,” and all ordinances of a general nature shall, within fifteen days after they are passed, be published in a legal newspaper in or of general circulation within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance. Every ordinance fixing a penalty or forfeiture for its violation shall, before the ordinance takes effect, be published for at least one week in the manner prescribed in this section. In cases of riots, infectious diseases, or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor immediately upon its first publication as provided in this section.

Source: Laws 1901, c. 18, § 47, p. 245; R.S.1913, § 4898; C.S.1922, § 4066; C.S.1929, § 16-405; R.S.1943, § 16-405; Laws 1971, LB 282, § 1; Laws 2016, LB704, § 74; Laws 2019, LB194, § 26.
Effective date September 1, 2019.

16-406 City council; testimony; power to compel; oaths.

The city council of a city of the first class or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may come before them. The president or acting president of the city council, or chairperson of such committee for the time being, may administer such requisite oaths. Such city council or committee shall have the

same authority to compel the giving of testimony as is conferred on courts of justice.

Source: Laws 1901, c. 18, § 94, p. 296; R.S.1913, § 4899; C.S.1922, § 4067; C.S.1929, § 16-406; R.S.1943, § 16-406; Laws 2016, LB704, § 75; Laws 2019, LB194, § 27.
Effective date September 1, 2019.

**ARTICLE 5
CONTRACTS AND FRANCHISES**

Section

- 16-501. Contracts; appropriation a condition precedent.
- 16-502. Officer; extra compensation prohibited; exception.
- 16-503. Contracts; concurrence of majority of city council required; vote of mayor; record.

16-501 Contracts; appropriation a condition precedent.

No contract shall be made by the city council in a city of the first class or any committee or member thereof and no expense shall be incurred by any of the officers or departments of the city, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise expressly provided by law.

Source: Laws 1901, c. 18, § 44, p. 243; R.S.1913, § 4900; C.S.1922, § 4068; C.S.1929, § 16-501; R.S.1943, § 16-501; Laws 2016, LB704, § 76; Laws 2019, LB194, § 28.
Effective date September 1, 2019.

16-502 Officer; extra compensation prohibited; exception.

No officer shall receive any pay or perquisites from a city of the first class other than his or her salary, as provided by ordinance and the law relating to cities of the first class, and the city council shall not pay or appropriate any money or any valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such city, unless the money or valuable thing is specifically appropriated and ordered by a vote of three-fourths of all the members elected to the city council.

Source: Laws 1901, c. 18, § 45, p. 244; R.S.1913, § 4901; C.S.1922, § 4069; C.S.1929, § 16-502; R.S.1943, § 16-502; Laws 1957, c. 38, § 2, p. 207; Laws 1959, c. 62, § 1, p. 279; Laws 1961, c. 283, § 2, p. 830; Laws 1971, LB 491, § 3; Laws 1972, LB 1209, § 1; Laws 1973, LB 24, § 2; Laws 1983, LB 370, § 7; Laws 2016, LB704, § 77; Laws 2019, LB194, § 29.
Effective date September 1, 2019.

Cross References

For other provisions of officers interested in public contracts, see sections 49-14,103.01 to 49-14,103.07.

16-503 Contracts; concurrence of majority of city council required; vote of mayor; record.

On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or city

council of a city of the first class, the yeas and nays shall be called and entered upon the record. To pass or adopt any bylaw or ordinance or any such resolution or order, a concurrence of a majority of the whole number of the members elected to the city council shall be required. The mayor may vote on any such matter when his or her vote will provide the additional vote required to create a number of votes equal to a majority of the number of members elected to the city council, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council. The requirements of a roll call or viva voce vote shall be satisfied by a city which utilizes an electronic voting device which allows the yeas and nays of each city council member to be readily seen by the public.

Source: Laws 1901, c. 18, § 34, p. 239; R.S.1913, § 4903; C.S.1922, § 4071; C.S.1929, § 16-503; R.S.1943, § 16-503; Laws 1961, c. 43, § 2, p. 174; Laws 1975, LB 172, § 2; Laws 1978, LB 609, § 1; Laws 1980, LB 662, § 3; Laws 1988, LB 625, § 1; Laws 2016, LB704, § 78; Laws 2019, LB194, § 30.

Effective date September 1, 2019.

ARTICLE 6

PUBLIC IMPROVEMENTS

(a) CONDEMNATION PROCEEDINGS

Section

16-606. Property; condemnation for streets; assessments; levy; collection.

(b) STREETS

- 16-609. Improvements; power of city council.
- 16-610. Public ways; maintenance and repair.
- 16-611. Vacation of street or alley; abutting property; how treated.
- 16-614. House numbers.
- 16-615. Grade or change of grade; procedure; damages; how ascertained; special assessments.
- 16-618. Improvement districts; property included.
- 16-621. Improvement districts; materials; kind; petition of landowners; bids; advertisement.
- 16-624. Improvement districts; creation upon petition; denial; assessments; bonds.
- 16-626. Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.
- 16-627. Intersections; improvement; cost; tax levy.
- 16-629. Curbs and gutters; authorized; petition; formation of district; bonds.
- 16-630. Curbing and guttering bonds; interest rate; special assessments; how levied.
- 16-631. Curbing and guttering; cost; paving bonds may include; special assessment.
- 16-632. Improvement districts; assessments; when authorized; ordinary repairs excepted.
- 16-637. Improvements; special tax; assessments; action to recover.
- 16-645. Damages caused by construction; procedure.
- 16-646. Special taxes; lien upon property; collection.
- 16-647. Special taxes; payment by part owner.
- 16-648. Money from special assessments; how used.
- 16-649. Improvements; contracts; bids; requirement.
- 16-650. Public improvements; acceptance by city engineer; approval or rejection by city council.
- 16-651. Grading and grading districts.
- 16-652. Grading; special assessments; when delinquent.
- 16-653. Grading bonds; interest rate.
- 16-654. Grading upon petition; assessments; bonds.

Section

(d) SIDEWALKS

- 16-661. Construction and repair; materials.
- 16-662. Construction and repair; failure of property owner; power of city.
- 16-663. Maintenance; snow and ice removal; duty of landowner; violation of ordinance; cause of action for damages.
- 16-664. Construction; cost; special assessment; levy; when delinquent; payment.
- 16-665. Ungraded streets; construction of sidewalks.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

- 16-671.01. Partial payments, authorized; interest; rate; warrants; issuance; payment.
- 16-672. Special assessments; equalization; reassessment.

(f) STORM SEWER DISTRICTS

- 16-672.07. Assessments; hearing; equalization; delinquent payments; interest.

(g) PUBLIC UTILITIES

- 16-674. Acquisition of plants or facilities; condemnation; procedure.
- 16-675. Acquisition; operation; tax authorized.
- 16-679. Service; duty to provide; rates; regulation.
- 16-680. Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.
- 16-691. Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.
- 16-691.01. Board of public works; surplus funds; investment; securities; purchase; sale.
- 16-692. Water commissioner; city council member and mayor ineligible.
- 16-693. Bonds; tax authorized; how used.

(h) PARKS

- 16-697. Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.

(i) MARKETS

- 16-699. Regulation of markets.

(j) PUBLIC BUILDINGS

- 16-6,100. Public buildings; construction; bonds authorized; approval of electors required, when.

(a) CONDEMNATION PROCEEDINGS

16-606 Property; condemnation for streets; assessments; levy; collection.

The city council of a city of the first class may assess and levy the whole expense and damage incurred in the creation of any street, avenue, or alley upon the real property fronting upon the same and other property nearby that may be benefited thereby in proportions according to benefits. Such assessments and levy shall be made by resolution, at a regular meeting of the city council, and notice of the time of such meeting and that such assessments will be made thereat shall be published in a legal newspaper in or of general circulation within the city ten days before such meeting. Such special taxes shall be due and payable to the city treasurer in thirty days after the assessment and levy. At the time of the next certification to the county clerk for general revenue purposes, such special assessment and levy, so far as not then paid, shall be certified to the county clerk and be put upon the tax list and be collected as other real estate taxes are collected, and paid over to the city treasurer to reimburse the city. Such special taxes shall be a lien on the property upon which assessed and levied from the assessment, and shall bear interest at a rate not to exceed the rate of interest specified in section

45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time due until paid. The proceedings for widening streets shall be the same as herein provided for creating new streets, and shall apply to the widening of streets, alleys, and avenues.

Source: Laws 1903, c. 19, § 7, p. 239; R.S.1913, § 4906; C.S.1922, § 4074; Laws 1923, c. 145, § 1, p. 359; C.S.1929, § 16-603; R.S.1943, § 16-606; Laws 1980, LB 933, § 9; Laws 1981, LB 167, § 10; Laws 2016, LB704, § 79; Laws 2019, LB194, § 31. Effective date September 1, 2019.

(b) STREETS

16-609 Improvements; power of city council.

The city council of a city of the first class shall have power to open, control, name, rename, extend, widen, narrow, vacate, grade, curb, gutter, park, and pave or otherwise to improve and control and keep in good repair and condition, in any manner it may deem proper, any street, avenue, or alley, or public park or square, or part of either, within the limits of the city or within its extraterritorial zoning jurisdiction, and it may grade partially or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley. When the city vacates all or any portion of a street, avenue, or alley, or public park or square, or part of either, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4908; C.S.1922, § 4076; C.S.1929, § 16-605; R.S.1943, § 16-609; Laws 2001, LB 483, § 4; Laws 2016, LB704, § 81; Laws 2019, LB194, § 32. Effective date September 1, 2019.

16-610 Public ways; maintenance and repair.

The mayor and city council of a city of the first class shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons, and shall cause the same to be kept open and in repair and free from nuisances.

Source: Laws 1901, c. 18, § 35, p. 239; Laws 1909, c. 19, § 1, p. 183; R.S.1913, § 4909; C.S.1922, § 4077; C.S.1929, § 16-606; R.S. 1943, § 16-610; Laws 2019, LB194, § 33. Effective date September 1, 2019.

16-611 Vacation of street or alley; abutting property; how treated.

(1) Upon the vacation of any street or alley by a city of the first class, the title to such property shall vest in the owners of the abutting property and become a part of such property, one-half on each side thereof, unless the city reserves title in the ordinance vacating such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(2) When a portion of a street or alley is vacated only on one side of the center thereof, the title to such property shall vest in the owner of the abutting

property and become part of such property unless the city reserves title in the ordinance vacating a portion of such street or alley. If title is retained by the city, such property may be sold, conveyed, exchanged, or leased upon such terms and conditions as shall be deemed in the best interests of the city.

(3) When the city vacates all or any portion of a street or alley, the city shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating ordinance with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

(4) The title to property vacated pursuant to this section shall be subject to the following:

(a) There is reserved to the city the right to maintain, operate, repair, and renew public utilities existing at the time title to the property is vacated there; and

(b) There is reserved to the city, any public utilities, and any cable television systems the right to maintain, repair, renew, and operate water mains, gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines, and other similar services and equipment and appurtenances, including lateral connections or branch lines, above, on, or below the surface of the ground that are existing as valid easements at the time title to the property is vacated for the purposes of serving the general public or the abutting properties and to enter upon the premises to accomplish such purposes at any and all reasonable times.

Source: Laws 1901, c. 18, § 48, IV, p. 145; Laws 1903, c. 19, § 7, p. 237; R.S.1913, § 4910; C.S.1922, § 4078; C.S.1929, § 16-607; R.S. 1943, § 16-611; Laws 1969, c. 58, § 2, p. 363; Laws 2001, LB 483, § 5; Laws 2005, LB 161, § 3; Laws 2019, LB194, § 34.
Effective date September 1, 2019.

16-614 House numbers.

The mayor and city council of a city of the first class may provide for regulating and requiring the numbering of houses along public streets or avenues.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4913; C.S.1922, § 4081; C.S.1929, § 16-610; R.S.1943, § 16-614; Laws 2019, LB194, § 35.
Effective date September 1, 2019.

16-615 Grade or change of grade; procedure; damages; how ascertained; special assessments.

(1) The mayor and city council of a city of the first class may establish the grade of any street, avenue, or alley in the city or within a county industrial area as defined in section 13-1111 contiguous to such city. When the grade of any street, avenue, or alley has been established, the grade of all or any part shall not be changed unless the city clerk has sent notice of the proposed change in grade to the owners of the lots or land abutting upon the street, avenue, or alley or part of a street, avenue, or alley where such change of grade is to be made. The notice shall be sent to the addresses of the owners as they appear in the office of the register of deeds upon the date of the mailing of the notice. The notice shall be sent by regular United States mail, postage prepaid,

postmarked at least twenty-one days before the date upon which the city council takes final action on approval of the ordinance authorizing the change in grade. The notice shall inform the owner of the nature of the proposed change, that final action by the city council is pending, and of the location where additional information on the project may be obtained. Following the adoption of an ordinance changing the grade of all or any part of a street, avenue, or alley, no change in grade shall be made until the damages to property owners which may be caused by such change of grade are determined as provided in sections 76-704 to 76-724.

(2) For the purpose of paying the damages, if any, so awarded, the mayor and city council may borrow money from any available fund in the amount necessary, which amount, upon the collection of such amount by special assessment, shall be transferred from such special fund to the fund from which it has been borrowed. No street, avenue, or alley shall be worked to such grade or change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before the mayor and city council enter into any contract to grade any such street, avenue, or alley, the damages, if any, sustained by the property owners, shall be ascertained by condemnation proceedings. For the purpose of paying the damages awarded and the costs of the condemnation proceedings, the mayor and city council may levy a special assessment upon the lots and lands abutting upon such street, avenue, or alley, or part thereof, so graded, as adjudged by the mayor and city council to be especially benefited in proportion to such benefits. Such assessment shall be collected as other special assessments.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4914; C.S.1922, § 4082; C.S.1929, § 16-611; R.S.1943, § 16-615; Laws 1951, c. 101, § 51, p. 470; Laws 1969, c. 81, § 1, p. 412; Laws 1995, LB 196, § 1; Laws 2015, LB361, § 20; Laws 2016, LB704, § 83; Laws 2019, LB194, § 36.
Effective date September 1, 2019.

16-618 Improvement districts; property included.

Any improvement district created pursuant to section 16-617 shall include only portions of different streets, or portions of alleys, or portions of each, which abut or adjoin so that such district, when created, makes up one continuous or extended street or more, except that the district may include a cul de sac, any street, alley, or portion thereof which is closed at one end or which connects with only one other existing street, alley, or portion thereof. Any improvement district may include portions of different streets, or portions of different alleys, or portions of each, if they abut or connect with each other, or if the several portions abut on pavement or gravel already laid, or any other of improvements already laid.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4084; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-618; Laws 1980, LB 654, § 1; Laws 2016, LB704, § 85; Laws 2019, LB194, § 37.
Effective date September 1, 2019.

16-621 Improvement districts; materials; kind; petition of landowners; bids; advertisement.

In advertising for bids for paving, repaving, graveling, or macadamizing, the mayor and city council of a city of the first class may provide for bids on different materials and types of construction, and shall in addition provide for asking bids on any material or materials that may be suggested by petition of owners of the record title representing twenty-five percent of the abutting property owners in an improvement district, if such petition is filed with the city clerk before advertisement for bids is ordered. On opening of bids for paving or repaving in any such district, the mayor and city council shall postpone action thereon for a period of not less than ten days. During such period of postponement, the owners of the record title representing a majority of the abutting property owners in a district may file with the city clerk a petition for the use of a particular material for paving for which a bid has been received, in which event a bid on that material shall be accepted and the work shall be done with that material. The regulations as to advertising for bids and opening of bids and postponing of action thereon and the right of selection of materials shall not apply in case of graveling. In case such owners fail to designate the material they desire used in such paving or repaving, or macadamizing, in the manner and within the time provided in this section, the mayor and city council shall determine the material to be used. The mayor and city council may reject all bids and readvertise if, in their judgment, the public interest requires.

Source: Laws 1917, c. 95, § 1, p. 254; C.S.1922, § 4034; Laws 1925, c. 50, § 1, p. 192; C.S.1929, § 16-613; Laws 1933, c. 27, § 1, p. 202; C.S.Supp.,1941, § 16-613; R.S.1943, § 16-621; Laws 1965, c. 54, § 1, p. 259; Laws 2016, LB704, § 88; Laws 2019, LB194, § 38.
Effective date September 1, 2019.

16-624 Improvement districts; creation upon petition; denial; assessments; bonds.

Whenever the owners of lots or lands abutting upon any street, avenue, or alley within a city of the first class, representing three-fourths of the front footage thereon, so that an improvement district when created will make up one continuous or extended thoroughfare or more, shall petition the mayor and city council to make improvement of such street, avenue, or alley without cost to the city, and to assess the entire cost of any such improvements in any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such improvement district or districts, it shall be the duty of the mayor and city council to create the proper improvement district or districts, which shall be consecutively numbered, and to improve the same and to proceed in the same manner and form as provided for in other improvement districts. The mayor and city council shall have power to levy the entire cost of such improvements of any such street, avenue, or alley, including intersections of streets or avenues and spaces opposite alleys, against the private property within such district, and to issue Street Improvement Bonds of District No. to pay for such improvements in the same manner and form as provided for in other improvement bonds. Such bonds shall be issued to cover the entire cost of so improving such streets or avenues, intersections of the same, and spaces opposite alleys. If the assessments provided for, or any part thereof, shall fail, or for any reason shall

be invalid, the mayor and city council may make other and further assessments upon such lots or lands as may be required to collect from the same the cost of any improvements properly chargeable thereto, as provided in this section. The mayor and city council shall have the discretion to deny the formation of the proposed district when the area to be improved has not previously been improved with a water system, sewer system, and grading of streets. If the mayor and city council should deny a requested improvement district formation, they shall state their grounds for such denial in a written letter to interested parties.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4919; C.S.1922, § 4087; Laws 1925, c. 50, § 4, p. 194; C.S.1929, § 16-616; Laws 1933, c. 27, § 2, p. 203; C.S.Supp.,1941, § 16-616; R.S.1943, § 16-624; Laws 1967, c. 67, § 7, p. 222; Laws 1983, LB 125, § 1; Laws 2016, LB704, § 91; Laws 2019, LB194, § 39.
Effective date September 1, 2019.

16-626 Intersection improvement bonds; amount; interest; warrants; partial payments; final payment; interest; restrictions on work.

In a city of the first class, for all improvements of the intersections and areas formed by the crossing of streets, avenues, or alleys, and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, the assessment shall be made upon all the taxable property of the city, and for the payment of such improvements, the mayor and city council are hereby authorized to issue improvement bonds of the city in such denominations as they deem proper, to be called Intersection Improvement Bonds, payable in not to exceed twenty years from date of the bonds and to bear interest payable annually or semiannually. Such bonds shall not be issued in excess of the cost of such improvements. For the purpose of making partial payments as the work progresses in making the improvements of streets, avenues, alleys, or intersections and areas formed by the crossing of streets, avenues, or alleys, or one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska, or the city, warrants may be issued by the mayor and city council upon certificates of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof, and upon completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor, which warrants shall be redeemed and paid upon the sale of bonds authorized by law. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council, and running until the date that the warrant is tendered to the contractor. Nothing in this section shall be construed as authorizing the mayor and city council to make improvements of any intersections or areas formed by the crossing of streets, avenues, or alleys, unless in connection with one or more blocks of any of aforesaid kinds or forms of street improvement of which the improvement of such intersection or areas shall form a part.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4921; Laws 1917, c. 96,

§ 1, p. 259; C.S.1922, § 4089; Laws 1923, c. 146, § 1, p. 360; Laws 1925, c. 50, § 14, p. 201; C.S.1929, § 16-618; R.S.1943, § 16-626; Laws 1965, c. 55, § 1, p. 261; Laws 1967, c. 67, § 9, p. 223; Laws 1969, c. 51, § 28, p. 289; Laws 1974, LB 636, § 1; Laws 2016, LB704, § 93; Laws 2019, LB194, § 40.
Effective date September 1, 2019.

16-627 Intersections; improvement; cost; tax levy.

The cost and expense of improving, constructing, or repairing streets, avenues, alleys, and sidewalks, at their intersections as provided in section 16-626, may be included in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the city council.

Source: Laws 1901, c. 18, § 75, p. 288; R.S.1913, § 4922; C.S.1922, § 4090; C.S.1929, § 16-619; R.S.1943, § 16-627; Laws 1967, c. 67, § 10, p. 224; Laws 2016, LB704, § 94; Laws 2019, LB194, § 41.

Effective date September 1, 2019.

16-629 Curbs and gutters; authorized; petition; formation of district; bonds.

In a city of the first class, curbing and guttering shall not be required or ordered to be laid on any street, avenue or alley not ordered to be paved, repaved, graveled or macadamized, except on a petition of the owners of two-thirds of the front footage of property abutting along the line of that portion of the street, avenue or alley which is to be curbed or guttered.

When such petition is presented, a curbing and guttering district shall be formed, which district shall be governed by the provisions of section 16-630. Any bonds issued on account of such district shall be known as Bonds of Curbing and Guttering District No.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4924; C.S.1922, § 4092; Laws 1925, c. 50, § 6, p. 196; C.S.1929, § 16-621; R.S. 1943, § 16-629; Laws 1965, c. 56, § 1, p. 263; Laws 2019, LB194, § 42.

Effective date September 1, 2019.

16-630 Curbing and guttering bonds; interest rate; special assessments; how levied.

If curbing, or curbing and guttering, is done upon any street, avenue, or alley in any improvement district in a city of the first class in which paving or other such improvement has been ordered, and the mayor and city council shall deem it expedient to do so, the mayor and city council may, for the purpose of paying the cost of such curbing, or curbing and guttering, cause to be issued bonds of the city, to be called Curbing and Guttering Bonds of Improvement District No. , payable in not exceeding ten years from date, bearing interest, payable annually or semiannually, with interest coupons attached. In all cases the mayor and city council shall assess at one time as a special assessment the total cost of such curbing, or curbing and guttering, upon the property abutting or adjacent to the portion of the street, avenue, or alley so improved, according to the special benefits. Such special assessments shall

become delinquent the same as the special assessments for paving, repaving, graveling, or macadamizing purposes, draw the same rate of interest, be subject to the same penalties, and may be paid in the same manner, as special assessments for such purpose. The special assessment shall constitute a sinking fund for the payment of such bonds and interest, and the bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 18, § 48, LV, p. 267; Laws 1901, c. 19, § 4, p. 315; Laws 1907, c. 13, § 1, p. 119; R.S.1913, § 4925; Laws 1915, c. 87, § 1, p. 226; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 196; C.S.1929, § 16-622; R.S.1943, § 16-630; Laws 1945, c. 21, § 1, p. 128; Laws 1969, c. 51, § 29, p. 290; Laws 2015, LB361, § 21; Laws 2016, LB704, § 96; Laws 2019, LB194, § 43.
Effective date September 1, 2019.

16-631 Curbing and guttering; cost; paving bonds may include; special assessment.

If an improvement district has been established in a city of the first class, an improvement thereon constructed, and curbing, or curbing and guttering, is therewith constructed and it becomes necessary to issue and sell street improvement bonds to pay for the cost of construction of the improvement and the curbing, or curbing and guttering, the mayor and city council may, at their discretion, include the cost of curbing, or curbing and guttering, with the cost of other improvements in the improvement district, and issue bonds for the combined cost of the improvement and curbing, or curbing and guttering, in any of the districts, naming the bonds Street Improvement Bonds of District No. The amount of money necessary for the payment of such bonds shall be levied upon and collected from abutting and adjacent property and property specially benefited as a special assessment.

Source: Laws 1915, c. 87, § 1, p. 227; C.S.1922, § 4093; Laws 1925, c. 50, § 7, p. 197; C.S.1929, § 16-622; R.S.1943, § 16-631; Laws 1967, c. 67, § 11, p. 224; Laws 2015, LB361, § 22; Laws 2016, LB704, § 97; Laws 2019, LB194, § 44.
Effective date September 1, 2019.

16-632 Improvement districts; assessments; when authorized; ordinary repairs excepted.

In order to defray the costs and expenses of improvements in any improvement district in a city of the first class, the mayor and city council shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley, or sidewalk, thus in whole or in part improved or repaired or which may be specially benefited by such improvements. The provisions in this section shall not apply to ordinary repairs of streets or alleys, and the cost of such repairs shall be paid out of the road fund. The mayor and city council are authorized to draw warrants against such fund not to exceed eighty-five percent of the amount levied as soon as levy shall be made by the county board.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4926; C.S.1922, § 4094; Laws 1925, c. 50, § 8, p. 198; C.S.1929, § 16-623; R.S.

1943, § 16-632; Laws 1967, c. 67, § 12, p. 225; Laws 2016, LB704, § 98; Laws 2019, LB194, § 45.
Effective date September 1, 2019.

16-637 Improvements; special tax; assessments; action to recover.

Any party feeling aggrieved by any special tax or assessment, or proceeding for improvements in a city of the first class, may pay such special taxes assessed and levied upon his, her, or its property, or such installments thereof as may be due at any time before the special tax or assessment shall become delinquent, under protest, and with notice in writing to the city treasurer that he, she, or it intends to sue to recover the special tax or assessment, which notice shall particularly state the alleged grievance and the ground for the grievance. Such party shall have the right to bring a civil action within sixty days to recover so much of the special tax or assessment paid as he, she, or it shows to be illegal, inequitable, and unjust, the costs to follow the judgment or to be apportioned by the court, as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make and did not make to the city council, sitting as a board of equalization, nor any complaint not specified in such notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justness of such tax. The burden of proof to show such tax or part thereof invalid, inequitable, and unjust shall rest upon the party who brings the suit.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907; c. 13, § 1, p. 111; R.S.1913, § 4931; C.S.1922, § 4099; Laws 1925, c. 50, § 11, p. 199; C.S.1929, § 16-628; R.S.1943, § 16-637; Laws 1967, c. 67, § 15, p. 226; Laws 2016, LB704, § 103; Laws 2019, LB194, § 46.
Effective date September 1, 2019.

16-645 Damages caused by construction; procedure.

In a city of the first class, all cases of damages arising from the creation or widening of new streets, avenues, or alleys, from the appropriation of property for sewers, parks, parkways, public squares, public heating plants, power plants, gas works, electric light plants, waterworks, or market places, and from change of grade in streets, avenues, or alleys, the damages sustained shall be ascertained and determined as provided in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Source: Laws 1901, c. 18, § 53, p. 271; Laws 1903, c. 19, § 12, p. 243; R.S.1913, § 4937; C.S.1922, § 4105; C.S.1929, § 16-634; R.S. 1943, § 16-645; Laws 1951, c. 101, § 52, p. 471; Laws 2002, LB 384, § 23; Laws 2019, LB194, § 47.
Effective date September 1, 2019.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

16-646 Special taxes; lien upon property; collection.

In every case of the levy of special taxes by a city of the first class, the special taxes shall be a lien on the property on which levied from date of levy and shall be due and payable to the city treasurer thirty days after such levy when not otherwise provided. At the time of the next certification for general revenue purposes to the county clerk, if not previously paid, the special taxes, except paving, repaving, graveling, macadamizing, and curbing or curbing and guttering shall be certified to the county clerk, placed upon the tax list, collected as other real estate taxes are collected, and paid over to the city treasurer. Paving, repaving, graveling, macadamizing, and curbing, or curbing and guttering taxes may be so certified and collected by the county treasurer at the option of such city.

Source: Laws 1901, c. 18, § 77, p. 288; Laws 1903, c. 19, § 14, p. 245; R.S.1913, § 4938; Laws 1917, c. 95, § 1, p. 255; C.S.1922, § 4106; Laws 1925, c. 50, § 12, p. 200; C.S.1929, § 16-635; R.S.1943, § 16-646; Laws 2016, LB704, § 104; Laws 2019, LB194, § 48.

Effective date September 1, 2019.

16-647 Special taxes; payment by part owner.

In every case of the levy of special taxes by a city of the first class, it shall be sufficient in any case to describe the lot or piece of ground as it is platted and recorded although the lot or piece of ground belongs to several persons. If any lot or piece of ground belongs to different persons, the owner of any part thereof may pay his or her portion of the tax on such lot or piece of ground, and his or her proper share may be determined by the city treasurer.

Source: Laws 1901, c. 18, § 78, p. 289; R.S.1913, § 4939; C.S.1922, § 4107; C.S.1929, § 16-636; R.S.1943, § 16-647; Laws 2016, LB704, § 105; Laws 2019, LB194, § 49.

Effective date September 1, 2019.

16-648 Money from special assessments; how used.

All money received from special assessments by a city of the first class may be applied to pay for the improvement for which assessed, or applied to reimburse the fund of the city from which the cost of the improvement may have been made.

Source: Laws 1901, c. 18, § 79, p. 289; Laws 1903, c. 19, § 15, p. 245; R.S.1913, § 4940; C.S.1922, § 4108; C.S.1929, § 16-637; R.S. 1943, § 16-648; Laws 2019, LB194, § 50.

Effective date September 1, 2019.

16-649 Improvements; contracts; bids; requirement.

All improvements of any streets, avenues, or alleys in a city of the first class for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder to be determined by the city council.

Source: Laws 1901, c. 18, § 74, p. 288; R.S.1913, § 4941; C.S.1922, § 4109; Laws 1925, c. 50, § 13, p. 201; C.S.1929, § 16-638; R.S.1943, § 16-649; Laws 1967, c. 67, § 16, p. 227; Laws 2016, LB704, § 106; Laws 2019, LB194, § 51.

Effective date September 1, 2019.

16-650 Public improvements; acceptance by city engineer; approval or rejection by city council.

When any improvement in a city of the first class is completed according to contract, it shall be the duty of the city engineer to carefully inspect the improvement and if the improvement is found to be properly done, such engineer shall accept the improvement and report his or her acceptance to the board of public works or mayor, who shall report the same to the city council with recommendation that the same be approved or disapproved. The city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the city engineer may accept the same in sections from time to time, if found to be done according to the contract, reporting his or her acceptance as in other cases.

Source: Laws 1901, c. 18, § 66, p. 278; R.S.1913, § 4942; C.S.1922, § 4110; C.S.1929, § 16-639; R.S.1943, § 16-650; Laws 2016, LB704, § 107; Laws 2019, LB194, § 52.
Effective date September 1, 2019.

16-651 Grading and grading districts.

Whenever the owners of lots and lands abutting upon any street or alley, or part thereof, within a city of the first class, representing two-thirds of the feet front abutting upon such part of street or alley desired to be graded, shall petition the city council to grade such street or alley, or part thereof, without cost to the city, the mayor and city council shall order the grading done and assess the costs thereof against the property abutting upon such street or alley or such part thereof so graded. For this purpose the mayor and city council shall create suitable grading districts, which shall be consecutively numbered.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-651; Laws 2016, LB704, § 108; Laws 2019, LB194, § 53.
Effective date September 1, 2019.

16-652 Grading; special assessments; when delinquent.

The cost of grading the streets and alleys within a grading district in a city of the first class shall be assessed upon the lots and lands specially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and city council under section 16-615, as a special assessment. The special assessment for grading purposes shall be levied at one time and shall become delinquent as follows: One-fifth of the total amount shall become delinquent in fifty days after such levy; one-fifth in one year; one-fifth in two years; one-fifth in three years; and one-fifth in four years. Each of the installments, except the first, shall draw interest at a rate not to exceed the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon, as in the case of other special assessments. The cost of grading the intersections of streets and spaces opposite

alleys in any such district shall be paid by the city out of the general fund of such city.

Source: Laws 1901, c. 18, § 73, p. 286; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-652; Laws 1980, LB 933, § 11; Laws 1981, LB 167, § 12; Laws 2015, LB361, § 23; Laws 2019, LB194, § 54.
Effective date September 1, 2019.

16-653 Grading bonds; interest rate.

For the purpose of paying the costs of grading the streets and alleys in a grading district in a city of the first class, exclusive of the intersection of streets and spaces opposite alleys therein, the mayor and city council shall have power, and may, by ordinance, cause to be issued bonds of the city, to be called District Grading Bonds of District No., payable in not exceeding five years from date and to bear interest, payable annually or semiannually, with interest coupons attached, and that as nearly as possible an equal amount of the bonds shall be made to mature each year, and in such case shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of such bonds and interest. The entire cost of grading any such street or alley properly chargeable to any lots or lands within any such grading district, according to feet front thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes or assessments. Upon payment, such lot or land shall be exempt from any lien or charge therefor.

Source: Laws 1901, c. 18, § 73, p. 285; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-653; Laws 1945, c. 21, § 2, p. 129; Laws 1969, c. 51, § 30, p. 290; Laws 2016, LB704, § 109; Laws 2019, LB194, § 55.
Effective date September 1, 2019.

16-654 Grading upon petition; assessments; bonds.

Whenever the owner of lots and lands abutting upon any street or avenue, alley, or lane, or part thereof in a city of the first class, representing three-fourths of the feet front abutting upon any such street, avenue, alley, or lane, or part thereof, shall petition the mayor and city council to grade the street, avenue, alley, or lane, including the intersections of streets, avenues, or lanes and spaces opposite alleys and lanes, without cost to the city, and to assess the entire cost of grading such street, avenue, alley, or lane or part thereof, including the intersections of streets, avenues, or lanes and spaces opposite alleys or lanes, against the lots and lands abutting upon such street, avenue, alley, or lane, or part thereof, so graded, thereupon the mayor and city council shall create grading districts, make assessments, issue bonds, and proceed in the same manner as in cases of grading provided in sections 16-651 and 16-653. Bonds shall be issued to cover the entire cost of grading both the streets, avenues, or alleys, and the intersections of streets or avenues and spaces opposite alleys.

Source: Laws 1901, c. 18, § 73, p. 287; R.S.1913, § 4943; C.S.1922, § 4111; C.S.1929, § 16-640; R.S.1943, § 16-654; Laws 2016, LB704, § 110; Laws 2019, LB194, § 56.
Effective date September 1, 2019.

(d) SIDEWALKS

16-661 Construction and repair; materials.

The mayor and city council of a city of the first class may construct and repair, or cause and compel the construction and repair, of sidewalks in such city of such material and in such manner as they may deem necessary.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4945; C.S.1922, § 4114; C.S.1929, § 16-643; R.S.1943, § 16-661; Laws 2016, LB704, § 112; Laws 2019, LB194, § 57.
Effective date September 1, 2019.

16-662 Construction and repair; failure of property owner; power of city.

In case the owner or owners of any lot, lots, or lands abutting on any street or avenue, or part thereof in a city of the first class, shall fail to construct or repair any sidewalk in front of his, her, or their lot, lots, or lands within the time and in the manner as directed and requested by the mayor and city council, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any sidewalk, and the mayor and city council shall have power to cause such sidewalk to be constructed or repaired and assess the cost thereof against such property.

Source: Laws 1901, c. 18, § 48, LV, p. 259; Laws 1901, c. 19, § 4, p. 307; Laws 1907, c. 13, § 1, p. 111; R.S.1913, § 4946; C.S.1922, § 4115; C.S.1929, § 16-644; R.S.1943, § 16-662; Laws 2016, LB704, § 113; Laws 2019, LB194, § 58.
Effective date September 1, 2019.

16-663 Maintenance; snow and ice removal; duty of landowner; violation of ordinance; cause of action for damages.

The mayor and city council of a city of the first class shall have power to provide for keeping the sidewalks clean and free from obstructions and accumulations of snow, ice, mud, and slush, and may provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof to pay expenses of keeping the sidewalks adjacent to such real estate clean and free from obstructions and accumulations of snow, ice, mud, and slush, and the mayor and city council shall also have power to provide that the violation of the ordinance relative thereto shall give rise to a cause of action for damages in favor of any person who is injured by the failure or neglect of the owner and occupant of the real estate to comply with the ordinance in question.

Source: Laws 1901, c. 18, § 50, p. 268; R.S.1913, § 4947; C.S.1922, § 4116; C.S.1929, § 16-645; R.S.1943, § 16-663; Laws 1963, c. 64, § 1, p. 263; Laws 2019, LB194, § 59.
Effective date September 1, 2019.

16-664 Construction; cost; special assessment; levy; when delinquent; payment.

The mayor and city council of a city of the first class may provide for the laying of permanent sidewalks. Upon the petition of any property owner who desires to build such a permanent sidewalk, the mayor and city council may

order the sidewalk to be built, the cost of the sidewalk until paid shall be a perpetual lien upon the real estate along which the property owner desires such sidewalk to be constructed, and the city council may assess and levy the costs of the sidewalk against such real estate as a special assessment. The total cost of the building of the permanent sidewalk shall be levied at one time upon the property along which such permanent sidewalk is to be built, and become delinquent as follows: One-seventh of the total cost shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at a rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy, until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. The city council shall pay for the building of such permanent sidewalk out of the general fund. The mayor and city council may pass an ordinance to carry into effect this section.

Source: Laws 1901, c. 18, § 121, p. 303; R.S.1913, § 4948; C.S.1922, § 4117; C.S.1929, § 16-646; R.S.1943, § 16-664; Laws 1963, c. 65, § 1, p. 264; Laws 1965, c. 57, § 1, p. 264; Laws 1980, LB 933, § 12; Laws 1981, LB 167, § 13; Laws 2015, LB361, § 24; Laws 2016, LB704, § 114; Laws 2019, LB194, § 60.
Effective date September 1, 2019.

16-665 Ungraded streets; construction of sidewalks.

The mayor and city council of a city of the first class may provide for the laying of permanent sidewalks and of temporary plank sidewalks upon the natural surface of the ground without regard to the grade, on streets not permanently improved, and provide for the assessment of the cost therein on the property in front of which such sidewalks shall be laid.

Source: Laws 1901, c. 18, § 48, VII, p. 246; R.S.1913, § 4949; C.S.1922, § 4118; C.S.1929, § 16-647; R.S.1943, § 16-665; Laws 2016, LB704, § 115; Laws 2019, LB194, § 61.
Effective date September 1, 2019.

(e) WATER, SEWER, AND DRAINAGE DISTRICTS

16-671.01 Partial payments, authorized; interest; rate; warrants; issuance; payment.

For the purpose of making partial payments as the work progresses, warrants may be issued by the mayor and city council of a city of the first class upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project in a total amount not to exceed ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for the balance of the amount due the contractor. The city shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the

certification of the amounts due by the engineer in charge and approval of the governing body, and running until the date that the warrant is tendered to the contractor. The warrants shall be redeemed and paid out of the proceeds received from the special assessments levied under the provisions of section 16-669, or out of the proceeds of the bonds or warrants issued under the provisions of sections 16-670 and 16-671. The warrants shall draw such interest as shall be provided in the warrants from the date of registration until paid.

Source: Laws 1955, c. 34, § 1, p. 142; Laws 1969, c. 51, § 34, p. 293; Laws 1974, LB 636, § 2; Laws 2019, LB194, § 62.
Effective date September 1, 2019.

16-672 Special assessments; equalization; reassessment.

Special assessments may be levied by the mayor and city council of a city of the first class for the purpose of paying the cost of constructing sewers, drainage, or water systems or mains within the city. Such assessment shall be levied on the real estate lying and being within the sewerage, drainage, or water service district in which such improvements may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the city council sitting as a board of equalization, after notice to property owners is provided as in other cases of special assessment. If the city council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage district, according to such other rule as the city council sitting as such board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All assessments made for sewerage, drainage, or water purposes shall be collected as special assessments and shall be subject to the same penalty as other special assessments. If sewers, drainage, or water systems or mains are constructed and any assessments to cover the costs thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and city council, for the purpose of paying the cost of such improvement, may make a reassessment of such costs on lots and real estate lying and being within the district in which such improvements may be situated, to the extent of the benefits to such property by reason of such improvements. Such reassessment shall be made substantially in the manner provided for making original special assessments as provided in this section. Any sums which may have been paid toward such improvement upon any lots or real estate included in such assessment shall be applied under the direction of the city council to the credit of the persons and property on account of which the sums were paid. If the credits exceed the sum reassessed against such persons and property, the city council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof. The sums so reassessed and not paid under a prior special assessment shall be collected and enforced in the same manner and be subject to the same penalty as other special assessments.

Source: Laws 1901, c. 18, § 67, p. 279; R.S.1913, § 4953; C.S.1922, § 4122; C.S.1929, § 16-651; R.S.1943, § 16-672; Laws 2015, LB361, § 26; Laws 2016, LB704, § 124; Laws 2019, LB194, § 63.
Effective date September 1, 2019.

(f) STORM SEWER DISTRICTS

16-672.07 Assessments; hearing; equalization; delinquent payments; interest.

The hearing on the proposed assessments as provided in section 16-672.06 shall be held by the mayor and city council sitting as a board of adjustment and equalization, at the time and place specified in such notice which shall not be less than twenty days nor more than thirty days after the date of the first publication, unless adjourned. Such session may be adjourned, with provisions for proper notice of such adjournment. At such meeting, the proposed assessment shall be adjusted and equalized with reference to benefits resulting from the improvement and shall not exceed such benefits. If any special assessment is payable in installments, each installment shall draw interest payable annually or semiannually from the date of levy until due. Any delinquent installments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of delinquency until paid.

Source: Laws 1961, c. 46, § 7, p. 180; Laws 1969, c. 51, § 35, p. 294; Laws 1980, LB 933, § 15; Laws 1981, LB 167, § 16; Laws 2016, LB704, § 131; Laws 2019, LB194, § 64.
Effective date September 1, 2019.

(g) PUBLIC UTILITIES

16-674 Acquisition of plants or facilities; condemnation; procedure.

The mayor and city council of a city of the first class shall have power to purchase or provide for, establish, construct, extend, enlarge, maintain, operate, and regulate for the city any such waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant, or to condemn and appropriate, for the use of the city, waterworks, gas works, power plant, including an electrical distribution facility, electric or other light works, or heating plant. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable. For purposes of this section, an electrical distribution facility shall be located within the retail service area of such city as approved by and on file with the Nebraska Power Review Board, pursuant to Chapter 70, article 10.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 260; Laws 1919, c. 38, § 1, p. 120; Laws 1921, c. 169, § 1, p. 661; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-674; Laws 1951, c. 101, § 53, p. 471; Laws 1982, LB 875, § 1; Laws 2002, LB 384, § 24; Laws 2019, LB194, § 65.
Effective date September 1, 2019.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

16-675 Acquisition; operation; tax authorized.

The mayor and city council of a city of the first class may levy a tax, not exceeding seven cents on each one hundred dollars upon the taxable value of all the taxable property in such city, for the purpose of paying the cost of lighting the streets, lanes, alleys, and other public places or property of the city, for the purpose of furnishing water, heat, or power for the city, or for the purpose of buying, establishing, extending, or maintaining such waterworks, gas, electric, or other light works, or heating or power plant, not exceeding three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for any one of the respective purposes.

Source: Laws 1901, c. 18, § 54, p. 272; Laws 1905, c. 23, § 2, p. 244; Laws 1907, c. 14, § 1, p. 122; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4954; Laws 1917, c. 97, § 1, p. 261; Laws 1919, c. 38, § 1, p. 121; Laws 1921, c. 169, § 1, p. 661; C.S.1922, § 4123; C.S.1929, § 16-652; Laws 1931, c. 29, § 1, p. 118; C.S.Supp.,1941, § 16-652; R.S.1943, § 16-675; Laws 1953, c. 287, § 8, p. 934; Laws 1979, LB 187, § 39; Laws 1992, LB 719A, § 43; Laws 2019, LB194, § 66.
Effective date September 1, 2019.

16-679 Service; duty to provide; rates; regulation.

The mayor and city council of a city of the first class shall have power (1) to require every individual or private corporation operating such works or plants, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, water, power, light, or heat, and to supply such city with water for fire protection, and with gas, water, power, light, or heat, for other necessary public or private purposes, (2) to regulate and fix the rents or rates of water, power, gas, electric light, or heat, and (3) to regulate and fix the charges for water meters, power meters, gas meters, electric light, or heat meters, or other device or means necessary for determining the consumption of water, power, gas, electric light, or heat. These powers shall not be abridged by ordinance, resolution, or contract.

Source: Laws 1901, c. 18, § 55, p. 273; R.S.1913, § 4955; C.S.1922, § 4124; C.S.1929, § 16-653; R.S.1943, § 16-679; Laws 2016, LB704, § 137; Laws 2019, LB194, § 67.
Effective date September 1, 2019.

16-680 Sewerage system; drainage; waterworks; bonds authorized; amount; approval of electors; sewer or water commissioner; authorized.

The mayor and city council of a city of the first class shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate four hundred thousand dollars for the purpose of constructing or aiding in the construction of a system of sewerage. The city may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in any amount, not exceeding in the aggregate seven hundred fifty thousand dollars, for the purpose of constructing culverts and drains for the purpose of deepening, widening, straightening, walling, filling, covering, altering, or changing the channel of any watercourse or any natural or artificial surface waterway or any

creek, branch, ravine, ditch, draw, basin, or part thereof flowing or extending through or being within the limits of the city and for the purpose of constructing artificial channels or covered drains sufficient to carry the water theretofore flowing in such watercourse and divert it from the natural channel and conduct the water through such artificial channel or covered drain and fill the old channel. The city may borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise in an amount not exceeding in the aggregate two hundred fifty thousand dollars for the purpose of constructing, maintaining, and operating a system of waterworks for the city. No such bonds shall be issued by the city council until the question of issuing the bonds has been submitted to the electors of the city at an election called and held for that purpose, notice of which shall be given by publication in a legal newspaper in or of general circulation in the city at least thirty days before the date of the election, and a majority of the electors voting upon the proposition have voted in favor of issuing such bonds. When any such bonds have been issued by the city, the city may levy annually upon all taxable property of the city such tax as may be necessary for a sinking fund for the payment of the accruing interest upon the bonds and the principal thereof at maturity. The city may provide for the office of sewer commissioner or water commissioner and prescribe the duties and powers of such offices.

Source: Laws 1901, c. 18, § 56, p. 274; Laws 1909, c. 20, § 1, p. 188; Laws 1913, c. 35, § 1, p. 112; R.S.1913, § 4956; Laws 1917, c. 98, § 1, p. 262; C.S.1922, § 4125; Laws 1927, c. 41, § 1, p. 175; C.S.1929, § 16-654; R.S.1943, § 16-680; Laws 1965, c. 59, § 1, p. 273; Laws 1971, LB 534, § 13; Laws 1992, LB 719A, § 45; Laws 2016, LB704, § 138; Laws 2019, LB194, § 68.
Effective date September 1, 2019.

16-691 Board of public works; powers and duties; employees authorized; approval of budget; powers of city council; signing of payroll checks.

The mayor and city council of a city of the first class may by ordinance confer upon the board of public works the active direction and supervision of the city's system of waterworks, power plant, or sewerage, heating, or lighting plant and the erection and construction of such system or plant. The board may provide that such duties be performed by such employee or employees as it may direct. The city council shall approve the budget of each proprietary function as provided in the Municipal Proprietary Function Act. The board shall make reports to the mayor and city council as often as the mayor and city council may require. In like manner the mayor and city council may confer upon such board the active direction and supervision of the system of streets and alleys.

The mayor and city council may, by ordinance, authorize and empower the board of public works to employ necessary laborers and clerks, to purchase material for the operation and maintenance of the systems, and to draw its orders on the several funds in the hands of the city treasurer to the credit of the various systems in payment of salaries, labor, and material. The mayor and city council shall establish the dollar amount for all extensions and projects above which the board of public works must obtain the approval of the mayor and city council before expending funds. The mayor and city council may, by ordinance, authorize and empower the board of public works to cooperate and participate in a plan of insurance designed and intended for the benefit of the employees of any public utility operated by the city. For that purpose the board of public

works may make contributions to pay premiums or dues under such plan, authorize deductions from salaries of employees, and take such other steps as may be necessary to effectuate such plan of insurance. All orders for the disbursement of funds shall be signed by the chairperson and secretary of the board or by any two members of the board who have previously been designated for that purpose by a resolution duly adopted by such board and shall be paid by the city treasurer, except that payroll checks only may be signed by any one member of the board who has previously been designated for that purpose by a resolution duly adopted by the board. Facsimile signatures of board members may be used to sign such orders and checks.

Source: Laws 1913, c. 191, § 1, p. 568; R.S.1913, § 4963; Laws 1917, c. 95, § 1, p. 256; C.S.1922, § 4132; Laws 1923, c. 150, § 1, p. 366; Laws 1925, c. 44, § 3, p. 177; C.S.1929, § 16-661; Laws 1931, c. 30, § 1, p. 120; C.S.Supp.,1941, § 16-661; R.S.1943, § 16-691; Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(1), p. 111; Laws 1953, c. 30, § 1, p. 117; Laws 1963, c. 66, § 1, p. 265; Laws 1978, LB 558, § 1; Laws 1981, LB 171, § 1; Laws 1983, LB 304, § 2; Laws 1993, LB 734, § 24; Laws 2016, LB704, § 148; Laws 2019, LB194, § 69.

Effective date September 1, 2019.

Cross References

Municipal Proprietary Function Act, see section 18-2801.

16-691.01 Board of public works; surplus funds; investment; securities; purchase; sale.

Any surplus funds remaining in the hands of the city treasurer of a city of the first class, to the credit of such various funds, may be invested by the board of public works, with the approval of the mayor and city council, in accordance with the provisions of sections 16-712, 16-713, and 16-715, in interest-bearing securities of the State of Nebraska or any political subdivision thereof, in certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation, or in interest-bearing securities of the United States upon an order for that purpose drawn by the board of public works upon the city treasurer. Such securities may be purchased, sold, or hypothecated by the board of public works with the approval of the mayor and city council, at their fair market value, and the interest earned by such securities shall be credited to the account of the utility from which the funds paid for the securities were originally drawn. In cities which have not conferred upon any board of public works the active direction and supervision of the city's system of waterworks, power plant, sewerage, and heating or lighting plant, the powers and duties conferred upon the board of public works as to the purchase, sale, and hypothecation of such securities shall be exercised by the city treasurer. Securities so purchased shall be held by the city treasurer who shall provide adequate bond for their safekeeping. When sold, the treasurer shall deliver such securities to the purchaser and collect the sale price.

Source: Laws 1947, c. 26, § 5, p. 130; Laws 1949, c. 29, § 1(2), p. 112; Laws 1969, c. 84, § 2, p. 424; Laws 1972, LB 1213, § 2; Laws 2016, LB704, § 149; Laws 2019, LB194, § 70.

Effective date September 1, 2019.

16-692 Water commissioner; city council member and mayor ineligible.

No member of the city council or the mayor of a city of the first class shall be eligible to the office of water commissioner during the term for which he or she shall be elected.

Source: Laws 1901, c. 18, § 64, p. 278; R.S.1913, § 4964; C.S.1922, § 4133; C.S.1929, § 16-662; R.S.1943, § 16-692; Laws 2016, LB704, § 151; Laws 2019, LB194, § 71.
Effective date September 1, 2019.

16-693 Bonds; tax authorized; how used.

When any bonds shall have been issued by a city of the first class for the purpose of constructing or aiding in the construction of a system of waterworks, power plant, sewerage, heating, lighting, or drainage, there shall thereafter be levied annually upon all taxable property of such city a tax not exceeding seven cents on each one hundred dollars for every twenty thousand dollars of bonds so issued, which shall be known as the waterworks tax, power tax, sewerage tax, heat tax, light tax, or drainage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the payment and collection of water, power, heat, or light, rent, taxes, and rates of assessments, shall first be applied to the payment of the current expenses of waterworks, power plant, heating, or lighting, to improvements, extensions, and additions thereto, and interest on money borrowed and bonds issued for their construction. The surplus, if any, shall be retained for a sinking fund for the payment of such loan or bonds at maturity.

Source: Laws 1901, c. 18, § 65, p. 278; Laws 1913, c. 35, § 4, p. 115; R.S.1913, § 4965; Laws 1917, c. 95, § 1, p. 257; C.S.1922, § 4134; C.S.1929, § 16-663; R.S.1943, § 16-693; Laws 1965, c. 60, § 2, p. 275; Laws 1979, LB 187, § 42; Laws 2016, LB704, § 152; Laws 2019, LB194, § 72.
Effective date September 1, 2019.

(h) PARKS**16-697 Park fund or park and recreation fund; annual levy; audit of accounts; warrants; contracts; reports.**

(1) For the purpose of (a) providing funds for amusements and recreation, (b) providing funds for laying out, purchasing, improving, and beautifying parks and public grounds, and (c) providing for the payment of the salaries and wages of employees of the board of park commissioners or the board of park and recreation commissioners, the mayor and city council of a city of the first class shall, each year at the time of making the levy for general city purposes, make a levy upon the taxable value of all the taxable property in such city. Such levy shall be collected and paid into the city treasury and shall constitute the park fund or park and recreation fund as the case may be.

(2) All accounts against the park fund or park and recreation fund of such city, provided for by subsection (1) of this section, for salaries and wages of the employees and all other expenses of such parks or recreational facilities shall be audited and allowed by the park or park and recreation commissioners. All

warrants thereon shall be drawn only by the chairperson of the commissioners. Warrants so drawn shall be paid by the city treasurer out of such fund.

(3) The park or park and recreation commissioners of such city, as the case may be, shall enter into any contracts of any nature involving an expenditure in accordance with the policies of the city council.

(4) The chairperson of the board of park or park and recreation commissioners shall, on January 1 and July 1 of each year, file with the city clerk an itemized statement of all the expenditures of the board.

Source: Laws 1901, c. 18, § 81, p. 290; Laws 1901, c. 19, § 8, p. 318; R.S.1913, § 4968; Laws 1915, c. 88, § 1, p. 228; C.S.1922, § 4137; Laws 1925, c. 52, § 1, p. 204; C.S.1929, § 16-667; Laws 1933, c. 26, § 1, p. 200; Laws 1935, c. 30, § 1, p. 134; C.S.Supp.,1941, § 16-667; R.S.1943, § 16-697; Laws 1953, c. 31, § 1, p. 119; Laws 1969, c. 86, § 2, p. 431; Laws 1979, LB 187, § 44; Laws 1992, LB 719A, § 48; Laws 2016, LB704, § 156; Laws 2019, LB194, § 73.
Effective date September 1, 2019.

(i) MARKETS

16-699 Regulation of markets.

No charge or assessment of any kind shall be made or levied on any vehicle or on the owner of any vehicle bringing produce or provisions to any market place in a city of the first class, or standing in or occupying a place in any of the market places of the city, or in the street contiguous to such market places on market days. The mayor and city council shall have full power to prescribe the kind and description of articles which may be sold and the stand or place to be occupied by the vendors and may authorize the immediate seizure and arrest and removal from the markets of any person violating the regulations as established by ordinance, together with any article of produce in his or her possession, and the immediate seizure and destruction of tainted or unsound meat, provisions, or other articles of food.

Source: Laws 1901, c. 18, § 36, p. 239; R.S.1913, § 4970; C.S.1922, § 4139; C.S.1929, § 16-669; R.S.1943, § 16-699; Laws 2016, LB704, § 160; Laws 2019, LB194, § 74.
Effective date September 1, 2019.

(j) PUBLIC BUILDINGS

16-6,100 Public buildings; construction; bonds authorized; approval of electors required, when.

The mayor and city council of a city of the first class shall have the power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise for the purpose of acquiring, by purchasing or constructing, including site acquisition, or aiding in the acquiring of a city hall, jail, auditorium, buildings for the fire department, and other public buildings, including the acquisition of buildings authorized to be acquired by Chapter 72, article 14, and including acquisition of buildings to be leased in whole or in part by the city to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings. No such bonds shall be

issued until after the same have been authorized by a majority vote of the electors of the city voting on the proposition of their issuance at an election called for the submission of such proposition and of which election notice of the time and place thereof shall have been given by publication in a legal newspaper in or of general circulation in the city three successive weeks prior thereto. If the building to be acquired is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska or other governmental agencies and if the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building and if the cost of acquisition does not exceed two million dollars, no such vote of the electors will be required.

Source: Laws 1911, c. 15, § 1, p. 132; R.S.1913, § 4971; Laws 1915, c. 89, § 1, p. 229; Laws 1919, c. 39, § 1, p. 122; C.S.1922, § 4140; C.S.1929, § 16-670; Laws 1941, c. 23, § 1, p. 116; C.S.Supp.,1941, § 16-670; R.S.1943, § 16-6,100; Laws 1945, c. 23, § 1, p. 131; Laws 1947, c. 30, § 1, p. 138; Laws 1947, c. 28, § 2, p. 135; Laws 1969, c. 87, § 1, p. 436; Laws 1972, LB 876, § 1; Laws 2016, LB704, § 161; Laws 2019, LB194, § 75.
Effective date September 1, 2019.

ARTICLE 7

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section

- 16-702. Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.
- 16-706. Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.
- 16-707. Board of equalization; meetings; notice; special assessments; grounds for review.
- 16-712. City funds; depositories; payment; conflict of interest.
- 16-713. City funds; certificates of deposit; time deposits; security required.
- 16-714. City funds; depository bond; conditions.
- 16-716. City funds; depositories; maximum deposits; liability of treasurer.
- 16-717. City treasurer; books and accounts.
- 16-718. City treasurer; warrants; issuance; delivery.
- 16-719. City treasurer; conversion of funds; penalty.
- 16-720. City treasurer; report; warrant register.
- 16-722. City receipts and expenditures; publication.
- 16-723. Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.
- 16-727. Claims; disallowance; appeal to district court; procedure.
- 16-728. Claims; allowance; appeal by taxpayer.

16-702 Property tax; general purposes; levy; collection; maximum authorized; specific purposes; additional levies.

(1) Subject to the limits in section 77-3442, the mayor and city council of a city of the first class shall have power to levy and collect taxes for all municipal purposes on the taxable property within the corporate limits of the city. All city taxes, except special assessments otherwise provided for, shall become due on the first day of December of each year.

(2) At the time provided for by law, the city council shall cause to be certified to the county clerk the amount of tax to be levied for purposes of the adopted

budget statement on the taxable property within the city for the year then ensuing, as shown by the assessment roll for such year, including all special assessments and taxes assessed as provided by law. The county clerk shall place the same on the proper tax list to be collected in the manner provided by law for the collection of county taxes in the county where such city is situated.

(3) In all sales for delinquent taxes for municipal purposes, if there are other delinquent taxes due from the same person or lien on the same property, the sales shall be for all the delinquent taxes. Such sales and all sales made under and by virtue of this section or the provisions of law referred to in this section shall be of the same validity and, in all respects, shall be deemed and treated as though such sale had been made for the delinquent county taxes exclusively.

(4) The maximum amount of tax which may be certified, assessed, and collected for purposes of the adopted budget statement shall not require a tax levy in excess of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. Any special assessments, special taxes, amounts assessed as taxes, and such sums as may be authorized by law to be levied for the payment of outstanding bonds and debts may be made by the city council in addition to the levy of eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city. The city council may certify a further amount of tax to be levied which shall not require a tax levy in excess of seven cents on each one hundred dollars upon the taxable value of the taxable property within such city for the purpose of establishing the sinking fund or sinking funds authorized by sections 19-1301 to 19-1304, and in addition thereto, when required by section 18-501, a further levy of ten and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property within such city may be imposed.

(5) Nothing in this section shall be construed to authorize an increase in the amounts of levies for any specific municipal purpose or purposes elsewhere limited by law, whether limited in specific sums or by tax levies.

Source: Laws 1901, c. 18, § 82, p. 291; Laws 1903, c. 19, § 16, p. 245; R.S.1913, § 4973; C.S.1922, § 4142; Laws 1925, c. 37, § 1, p. 145; C.S.1929, § 16-702; Laws 1937, c. 176, § 3, p. 694; Laws 1939, c. 12, § 5, p. 82; Laws 1941, c. 157, § 5, p. 610; C.S.Supp.,1941, § 16-702; R.S.1943, § 16-702; Laws 1947, c. 29, § 2, p. 136; Laws 1953, c. 287, § 12, p. 936; Laws 1957, c. 39, § 1, p. 210; Laws 1969, c. 145, § 16, p. 681; Laws 1979, LB 187, § 45; Laws 1987, LB 441, § 1; Laws 1992, LB 1063, § 8; Laws 1992, Second Spec. Sess., LB 1, § 8; Laws 1996, LB 1114, § 28; Laws 2016, LB704, § 173; Laws 2019, LB194, § 76.
Effective date September 1, 2019.

16-706 Expenditures; how made; limitations; diversion of funds; violation; penalty; payment of judgments.

The mayor and city council of a city of the first class shall not have power to appropriate, issue, or draw any order or warrant on the city treasurer for money, unless the order or warrant has been appropriated or ordered by ordinance or the claim for the payment of which such order or warrant is issued has been allowed according to sections 16-726 to 16-729, and a fund has been provided in the adopted budget statement out of which such claim is

payable. Any transfer or diversion of the money or credits from any of the funds to another fund or to a purpose other and different from that for which proposed, except as provided in section 16-721, shall render any city council member voting therefor or any officer of the city participating therein guilty of a misdemeanor, and any person shall, upon conviction thereof, be fined twenty-five dollars for each offense, together with costs of prosecution. Should any judgment be obtained against the city, the mayor and finance committee, with the sanction of the city council, may borrow a sufficient amount to pay the judgments, for a period of time not to extend beyond the close of the next fiscal year, which sum and interest thereon shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

Source: Laws 1901, c. 18, § 43, p. 243; R.S.1913, § 4976; C.S.1922, § 4145; C.S.1929, § 16-705; Laws 1935, Spec. Sess., c. 10, § 11, p. 78; Laws 1941, c. 130, § 17, p. 501; C.S.Supp.,1941, § 16-705; R.S.1943, § 16-706; Laws 1959, c. 63, § 1, p. 282; Laws 1961, c. 40, § 2, p. 168; Laws 1969, c. 145, § 17, p. 682; Laws 1987, LB 652, § 3; Laws 2016, LB704, § 175; Laws 2019, LB194, § 77. Effective date September 1, 2019.

16-707 Board of equalization; meetings; notice; special assessments; grounds for review.

The mayor and city council of a city of the first class 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 legal newspaper in or of general circulation in the city. When so assembled they shall have power to equalize all special assessments, not otherwise provided for, and to supply any omissions in the assessments and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the city 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 city 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 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 city council sitting as a board of equalization, or as otherwise provided, after publication and notice to property owners herein provided. In cases where the city 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; Laws 2016, LB704, § 176; Laws 2019, LB194, § 78. Effective date September 1, 2019.

16-712 City funds; depositories; payment; conflict of interest.

The city treasurer of a city of the first class 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 treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council 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 shall also be 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 city shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such city 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.

Source: Laws 1901, c. 18, § 84, p. 293; R.S.1913, § 4980; C.S.1922, § 4149; C.S.1929, § 16-711; Laws 1935, c. 140, § 3, p. 516; C.S.Supp.,1941, § 16-711; R.S.1943, § 16-712; Laws 1957, c. 54, § 2, p. 263; Laws 1959, c. 48, § 1, p. 235; Laws 1969, c. 84, § 3, p. 425; Laws 1989, LB 33, § 18; Laws 1996, LB 1274, § 18; Laws 2001, LB 362, § 19; Laws 2016, LB704, § 180; Laws 2019, LB194, § 79. Effective date September 1, 2019.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer of a city of the first class may, upon resolution of the mayor and city council authorizing the action, 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; Laws 2016, LB704, § 181; Laws 2019, LB194, § 80.
Effective date September 1, 2019.

16-714 City funds; depository bond; conditions.

For the security of the fund so deposited, the city treasurer of a city of the first class shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions thereof, which bond shall run to the city and be approved by the mayor. Such bond shall be conditioned that such a depository shall, at the end of every quarter, render to the city treasurer a statement in duplicate, showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion thereto, and how credited. The bond shall also be conditioned that the depository shall generally do and perform whatever may be required by the provisions of sections 16-712 to 16-715 and faithfully discharge the trust reposed in such depository. Such bond shall be as nearly as practicable in the form provided in section 77-2304. No person in any way connected with any depository as an officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. Such bond shall be deposited with the city clerk. 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, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 115; Laws 1937, c. 22, § 1, p. 134; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-714; Laws 1969, c. 84, § 5, p. 426; Laws 1989, LB 33, § 20; Laws 2001, LB 362, § 21; Laws 2016, LB704, § 182; Laws 2019, LB194, § 81.
Effective date September 1, 2019.

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The city treasurer of a city of the first class 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; Laws 2016, LB704, § 183; Laws 2019, LB194, § 82.
Effective date September 1, 2019.

16-717 City treasurer; books and accounts.

The city treasurer of a city of the first class shall receive all money belonging to the city, and the city clerk and city treasurer shall keep their books and accounts in such a manner as the mayor and city council shall prescribe. The city treasurer shall keep a daily cash book, which shall be footed and balanced daily, and such books and accounts shall always be subject to inspection of the mayor, members of the city council, and such other persons as they may designate.

Source: Laws 1901, c. 18, § 88, p. 295; R.S.1913, § 4983; C.S.1922, § 4152; C.S.1929, § 16-714; R.S.1943, § 16-717; Laws 2016, LB704, § 184; Laws 2019, LB194, § 83.
Effective date September 1, 2019.

16-718 City treasurer; warrants; issuance; delivery.

Upon allowance of a claim by the city council of a city of the first class, the order for the payment thereof shall specify the particular fund out of which it is payable as specified in the adopted budget statement, and no order or warrant shall be drawn in excess of eighty-five percent of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn. All warrants drawn upon the treasury must be signed by the mayor and countersigned by the city clerk and shall state the particular fund to which the same is chargeable, the person to whom payable, and for what particular object. No money shall be otherwise paid than upon such warrant so drawn. Such warrants may be delivered immediately when so drawn.

Source: Laws 1901, c. 18, § 89, p. 295; Laws 1909, c. 19, § 1, p. 186; R.S.1913, § 4984; C.S.1922, § 4153; C.S.1929, § 16-715; R.S. 1943, § 16-718; Laws 1963, c. 68, § 1, p. 268; Laws 1969, c. 145, § 18, p. 683; Laws 2016, LB704, § 185; Laws 2019, LB194, § 84.
Effective date September 1, 2019.

16-719 City treasurer; conversion of funds; penalty.

The city treasurer of a city of the first class shall keep all money in his or her hands belonging to the city separate and distinct from his or her own money. He or she is expressly prohibited from using, either directly or indirectly, the city money or warrants in his or her custody and keeping for his or her own use and benefit or that of any other person. Any violation of this section shall

subject him or her to immediate removal from office by the city council, and the council may declare such office vacant. The mayor shall appoint a successor, who shall be confirmed by the city council, to hold office for the remainder of the term.

Source: Laws 1901, c. 18, § 90, p. 295; R.S.1913, § 4985; C.S.1922, § 4154; C.S.1929, § 16-716; R.S.1943, § 16-719; Laws 2016, LB704, § 186; Laws 2019, LB194, § 85.
Effective date September 1, 2019.

16-720 City treasurer; report; warrant register.

The city treasurer of a city of the first class shall report to the mayor and city council annually, and more often if required, at such times as may be prescribed by ordinance, giving a full and detailed account of the receipts and expenditures during the preceding fiscal year, and the state of the treasury. He or she shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, time of payment, the fund from which paid, and the person to whom paid. All such warrants shall be examined by the finance committee at the time of making such annual report.

Source: Laws 1901, c. 18, § 91, p. 296; R.S.1913, § 4986; C.S.1922, § 4155; C.S.1929, § 16-717; R.S.1943, § 16-720; Laws 2016, LB704, § 187; Laws 2019, LB194, § 86.
Effective date September 1, 2019.

16-722 City receipts and expenditures; publication.

The mayor and city council of a city of the first class shall cause to be published semiannually a statement of the receipts of the city and an itemized account of the expenditures of the city.

Source: Laws 1901, c. 18, § 93, p. 296; R.S.1913, § 4988; C.S.1922, § 4157; C.S.1929, § 16-719; R.S.1943, § 16-722; Laws 1992, LB 415, § 1; Laws 2016, LB704, § 189; Laws 2019, LB194, § 87.
Effective date September 1, 2019.

Cross References

Receipts and expenditures, publication requirements, village or city having population of not more than one hundred thousand, see section 19-1101.

16-723 Taxes; payable in cash; sinking fund; investment; matured bonds or coupons; payment.

All taxes levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of a city of the first class shall be payable in money only. Except as otherwise expressly provided, no money so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which it shall have been raised. Such sinking fund may, under the direction of the mayor and city council, be invested in any of the unmatured bonds issued by the city, if they can be procured by the city treasurer at such rate or premium as shall be prescribed by ordinance. Any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the city

treasurer out of any fund especially created for that purpose without any further order or allowance by the mayor or city council.

Source: Laws 1901, c. 18, § 96, p. 297; R.S.1913, § 4989; C.S.1922, § 4158; C.S.1929, § 16-720; R.S.1943, § 16-723; Laws 2016, LB704, § 190; Laws 2019, LB194, § 88.
Effective date September 1, 2019.

16-727 Claims; disallowance; appeal to district court; procedure.

When the claim of any person against a city of the first class, except a tort claim as defined in section 13-903, is disallowed in whole or in part by the city council, such person may appeal from the decision of the city council to the district court of the same county by causing a written notice to be served on the city clerk within twenty days after making such decision and executing a bond to such city, with good and sufficient sureties to be approved by the city clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against the appellant.

Source: Laws 1901, c. 18, § 38, p. 240; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-727; Laws 1969, c. 138, § 22, p. 635; Laws 2016, LB704, § 191; Laws 2019, LB194, § 89.
Effective date September 1, 2019.

16-728 Claims; allowance; appeal by taxpayer.

Any taxpayer may appeal from the allowance of any claim against a city of the first class, except a tort claim as defined in section 13-903, by serving a written notice upon the city clerk within ten days from such allowance and giving bond as provided in section 16-727. When the city council, by ordinance, provides for the publication of the list of the claims allowed, giving the amounts allowed and the names of the persons to whom allowed, in a legal newspaper in or of general circulation in such city, such appeal may be taken by a taxpayer by serving a notice thereof within such time after such publication as may be fixed by such ordinance, and giving bond for such appeal within ten days after such allowance.

Source: Laws 1901, c. 18, § 38, p. 241; Laws 1903, c. 19, § 6, p. 236; Laws 1907, c. 13, § 1, p. 109; R.S.1913, § 4991; C.S.1922, § 4160; C.S.1929, § 16-722; R.S.1943, § 16-728; Laws 1969, c. 138, § 23, p. 635; Laws 2016, LB704, § 192; Laws 2019, LB194, § 90.
Effective date September 1, 2019.

ARTICLE 8

OFFSTREET PARKING

Section

16-808. Property not subject to condemnation.

16-808 Property not subject to condemnation.

Property now used or hereafter acquired for offstreet motor vehicle parking by a private operator within a city of the first class shall not be subject to condemnation.

Source: Laws 1955, c. 35, § 8, p. 146; Laws 2019, LB194, § 91.
Effective date September 1, 2019.

CHAPTER 17

CITIES OF THE SECOND CLASS AND VILLAGES

Article.

1. Laws Applicable Only to Cities of the Second Class. 17-108.02, 17-121.

ARTICLE 1

LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section

- 17-108.02. Officers and employees; merger of offices or employment; salaries.
17-121. Health and sanitation; rules and regulations; board of health; members; powers.

17-108.02 Officers and employees; merger of offices or employment; salaries.

(1) All officers and employees of a city of the second class shall receive such compensation as the mayor and city council may fix at the time of their appointment or employment subject to the limitations set forth in this section.

(2) The city council may at its discretion by ordinance combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(3) The city manager in a city of the second class under the city manager plan of government as provided in the City Manager Plan of Government Act may in his or her discretion combine and merge any elective or appointive office or employment or any combination of duties of any such offices or employments, except mayor and city council member, with any other elective or appointive office or employment so that one or more of such offices or employments or any combination of duties of any such offices or employments may be held by the same officer or employee at the same time.

(4) The offices or employments merged and combined under subsection (2) or (3) of this section shall always be construed to be separate, and the effect of the combination or merger shall be limited to a consolidation of official duties only. The salary or compensation of the officer or employee holding the merged and combined offices or employments or offices and employments shall not be in excess of the maximum amount provided by law for the salary or compensation of the office, offices, employment, or employments so merged and combined.

(5) For purposes of this section, volunteer firefighters and ambulance drivers shall not be considered officers.

Source: Laws 1879, § 7, p. 195; Laws 1881, c. 23, § 2, p. 168; Laws 1911, c. 16, § 1, p. 133; R.S.1913, § 5000; Laws 1919, c. 46, § 1, p. 130; C.S.1922, § 4169; C.S.1929, § 17-108; Laws 1935, c. 36, § 3, p. 149; C.S.Supp.,1941, § 17-108; Laws 1943, c. 30, § 2, p. 140; R.S.1943, § 17-108; Laws 1945, c. 25, § 1, p. 135; Laws 1947, c. 31, § 1(3), p. 140; Laws 1972, LB 1145, § 2; Laws 1984, LB 368,

§ 2; Laws 1984, LB 682, § 7; Laws 1990, LB 756, § 2; Laws 1990, LB 931, § 3; Laws 1991, LB 12, § 2; Laws 1994, LB 76, § 492; Laws 2017, LB133, § 7; Laws 2019, LB193, § 6.
Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

17-121 Health and sanitation; rules and regulations; board of health; members; powers.

(1) A city of the second class shall have the power to make regulations to prevent the introduction and spread of contagious, infectious, or malignant diseases into the city, to make quarantine laws for that purpose, and to enforce such regulations.

(2) In cities of the second class with a commission plan of government as provided in the Municipal Commission Plan of Government Act and cities of the second class with a city manager plan of government as provided in the City Manager Plan of Government Act, a board of health shall be created consisting of five members: The mayor, who shall be chairperson, and four 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 city manager has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(3) In all other cities of the second class, a board of health shall be created consisting of four members: The mayor, who shall be chairperson, the president of the city council, 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 mayor has appointed a chief of police, the chief of police shall serve on the board as secretary and quarantine officer.

(4) 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 city, may enforce them, and may provide fines and punishments for the violation of such rules and regulations. The board of health shall have power to and shall make all necessary rules and regulations relating to matters of sanitation of such city, including the removal of dead animals, the sanitary condition of the streets, alleys, vacant grounds, stockyards, wells, cisterns, privies, waterclosets, cesspools, and all buildings and places not specified where filth, nuisances, or offensive matter is kept or is liable to or does accumulate. The board of health may regulate, suppress, and prevent the occurrence of nuisances and enforce all laws of the state and ordinances of the city relating to nuisances or to matters of sanitation of such city. The board of health shall also have control of hospitals, dispensaries, places for treatment of sick, and related matters under such restrictions and provisions as may be provided by ordinance of such city.

Source: Laws 1879, § 39, II, p. 201; Laws 1881, c. 24, § 1, p. 194; Laws 1895, c. 14, § 1, II, p. 109; R.S.1913, § 5015; Laws 1919, c. 44, § 1, p. 128; C.S.1922, § 4184; C.S.1929, § 17-123; R.S.1943, § 17-121; Laws 1977, LB 190, § 2; Laws 1993, LB 119, § 2; Laws

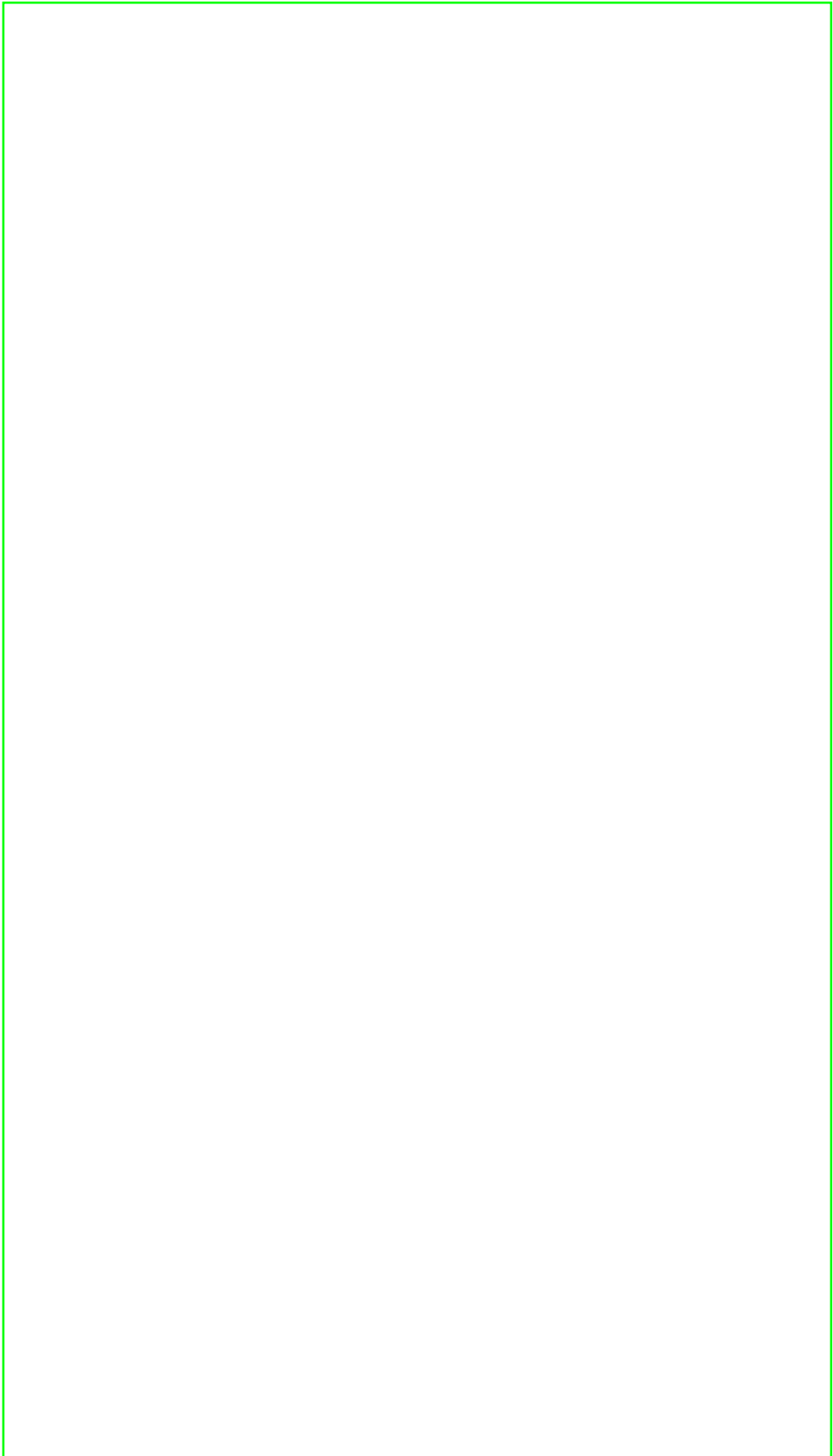
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS § 17-121

1994, LB 1019, § 2; Laws 1996, LB 1162, § 1; Laws 2017, LB133, § 17; Laws 2019, LB193, § 7.
Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

Municipal Commission Plan of Government Act, see section 19-401.



CHAPTER 18

CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

2. Direct Borrowing from Financial Institution. 18-201.
8. Regional Metropolitan Transit Authority Act. 18-801 to 18-825.
12. Miscellaneous Taxes. 18-1208.
17. Miscellaneous. 18-1720, 18-1758.
21. Community Development. 18-2101 to 18-2117.04.
25. Initiative and Referendum. 18-2507, 18-2515.
27. Municipal Economic Development. 18-2705 to 18-2713.

ARTICLE 2

DIRECT BORROWING FROM FINANCIAL INSTITUTION

Section

18-201. Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

18-201 Direct borrowing; purposes; ordinance or resolution; public notice; limitation.

(1) The mayor and the council of any city or board of trustees of any village, in addition to other powers granted by law, may by ordinance or resolution provide for direct borrowing from a financial institution for the purposes outlined in this section. Loans made under this section shall not be restricted to a single year and may be repaid in installment payments for a term not to exceed seven years.

(2) The mayor and the council of any city or board of trustees of any village may borrow directly from a financial institution for the purchase of real or personal property, construction of improvements, or refinancing of existing indebtedness upon a certification in the ordinance or resolution authorizing the direct borrowing that:

(a) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing would be impractical;

(b) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through traditional bond financing could not be completed within the time restraints facing the city or village; or

(c) Financing the purchase of property, construction of improvements, or refinancing of existing indebtedness through direct borrowing would generate taxpayer savings over traditional bond financing.

(3) Prior to approving direct borrowing under this section, the council or board of trustees shall include in any public notice required for meetings a clear notation that an ordinance or resolution authorizing direct borrowing from a financial institution will appear on the agenda.

(4)(a) The total amount of indebtedness attributable to any year from direct borrowing under this section shall not exceed:

(i) For a city of the metropolitan class, city of the primary class, or city of the first class, ten percent of the municipal budget of the city; and

(ii) For any city of the second class or village, twenty percent of the municipal budget of the city or village.

(b) For purposes of this subsection, (i) the amount of any loan which shall be attributable to any year for purposes of the limitation on the total amount of indebtedness from direct borrowing is the total amount of the outstanding loan balance divided by the number of years over which the loan is to be repaid and (ii) the amount of indebtedness from any direct borrowing shall only be measured as of the date the ordinance or resolution providing for such direct borrowing is adopted.

(5) Prior to approving direct borrowing under this section, a municipality shall consider, to the extent possible, proposals from multiple financial institutions.

(6) For purposes of this section, financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, or savings and loan association.

Source: Laws 2015, LB152, § 1; Laws 2019, LB121, § 1.
Effective date September 1, 2019.

ARTICLE 8

REGIONAL METROPOLITAN TRANSIT AUTHORITY ACT

Section

- 18-801. Act, how cited.
- 18-802. Legislative findings and declarations.
- 18-803. Terms, defined.
- 18-804. Regional metropolitan transit authority; conversion from transit authority; vote; powers and authority; municipality; request to join; vote; decision to leave; vote; operating jurisdiction of authority.
- 18-805. Act, how construed; limit on creation of authority.
- 18-806. Calculation of allowable growth under Nebraska Budget Act.
- 18-807. Regional metropolitan transit board; name; temporary board; vacancy.
- 18-808. Board; districts; redrawn; when; vacancy; appointment.
- 18-809. Board; member; oath; bond.
- 18-810. Board; organization; quorum; meetings; minutes; public records.
- 18-811. Board; member; conflict of interest.
- 18-812. Regional metropolitan transit authority; powers.
- 18-813. Revenue; use.
- 18-814. Retirement plan; report; contents; Auditor of Public Accounts; powers.
- 18-815. Regional metropolitan transit authority; finances; powers; issue bonds or certificates; powers and duties.
- 18-816. Revenue bonds or certificates; statement required.
- 18-817. Revenue bonds or certificates; sale as unit after advertising for bids.
- 18-818. Revenue bonds; securities.
- 18-819. Exemption from assessment and taxation.
- 18-820. Use of revenue; agreements, leases, contracts, and equipment trust notes or certificates; authorized.
- 18-821. Fiscal operating year; established; budget; certain expenditures; vote required; report and financial statement.
- 18-822. Tax levy.
- 18-823. Rules and regulations.
- 18-824. Board; rehabilitate, reconstruct, and modernize system; establish depreciation policy.
- 18-825. Employees; effect on collective-bargaining agreement.

18-801 Act, how cited.

Sections 18-801 to 18-825 shall be known and may be cited as the Regional Metropolitan Transit Authority Act.

Source: Laws 2019, LB492, § 1.

Effective date September 1, 2019.

18-802 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Passenger, truck, and pedestrian traffic on streets located in municipalities within metropolitan statistical areas or combined statistical areas have been and continue to be severely congested by the number of motor vehicles operating within such municipalities;

(2) Such existing traffic congestion has created a dangerous hazard to the lives and property of pedestrians and those traveling in private and public vehicles and obstructs the administration of firefighting forces and police protection forces in such municipalities;

(3) The availability of public transportation within such municipalities plays an increasing role in the recruitment and retention of both businesses and employees within such municipalities;

(4) Public transportation fosters economic development, real estate investment, and local job creation, and investment in new public transportation projects provides both short-term and long-term impacts on economic growth;

(5) Interconnectivity of public transportation systems across multiple municipalities within the same metropolitan statistical area or combined statistical area can play a critical role in fostering economic growth, avoiding duplication of service, ensuring equitable access to transportation service throughout contiguous urbanized areas, and supporting transportation that crosses jurisdictional boundaries; and

(6) Relieving congestion on the streets of such municipalities and providing for the establishment of comprehensive regional public transportation systems in such municipalities is a matter of public interest and statewide concern.

Source: Laws 2019, LB492, § 2.

Effective date September 1, 2019.

18-803 Terms, defined.

For purposes of the Regional Metropolitan Transit Authority Act:

(1) Board means the board of directors of any regional metropolitan transit authority established under the Regional Metropolitan Transit Authority Act;

(2) Combined statistical area means two or more adjacent metropolitan statistical areas or micropolitan statistical areas delineated by the United States Office of Management and Budget as a combined statistical area under standards developed using data from the 2010 Census of Population by the United States Bureau of the Census, and data from the 2006-2010 American Community Survey 5-Year Estimate by the United States Bureau of the Census, as such delineations existed on April 10, 2018;

(3) Governing body means the city council of a city or the village board of trustees of a village;

(4) Metropolitan statistical area means a core-based statistical area delineated by the United States Office of Management and Budget as a metropolitan statistical area under standards developed using data from the 2010 Census of Population by the United States Bureau of the Census, and data from the 2006-2010 American Community Survey 5-Year Estimate by the United States Bureau of the Census, as such delineations existed on April 10, 2018;

(5) Micropolitan statistical area means a core-based statistical area delineated by the United States Office of Management and Budget as a micropolitan statistical area under standards developed using data from the 2010 Census of Population by the United States Bureau of the Census, and data from the 2006-2010 American Community Survey 5-Year Estimate by the United States Bureau of the Census, as such delineations existed on April 10, 2018;

(6) Municipality means any city or village in the State of Nebraska;

(7) Revenue bonds means revenue bonds issued by a regional metropolitan transit authority established under the Regional Metropolitan Transit Authority Act; and

(8) Territory means the operating jurisdiction of a regional metropolitan transit authority as established pursuant to section 18-804.

Source: Laws 2019, LB492, § 3.

Effective date September 1, 2019.

18-804 Regional metropolitan transit authority; conversion from transit authority; vote; powers and authority; municipality; request to join; vote; decision to leave; vote; operating jurisdiction of authority.

(1) A transit authority established under the Transit Authority Law which serves one or more municipalities located within the same metropolitan statistical area or combined statistical area may convert into a regional metropolitan transit authority upon a two-thirds vote of the board of directors of such transit authority. As of the effective date of such conversion, to be specified at the time of such vote, such transit authority shall remain a body corporate and politic and a governmental subdivision of the State of Nebraska, but thereafter shall be known as the Regional Metropolitan Transit Authority of (filling out the blank with the name of the municipality that established the transit authority under the Transit Authority Law or of the municipality, municipalities, region, metropolitan statistical area, or combined statistical area comprising the regional metropolitan transit authority). In addition to the powers and authority granted under the Transit Authority Law, such regional metropolitan transit authority shall have and possess all of the powers and authority of, together with the duties and responsibilities of, a regional metropolitan transit authority pursuant to the Regional Metropolitan Transit Authority Act. The operating jurisdiction of such regional metropolitan transit authority shall be deemed to extend to all areas within the boundaries of the municipality that established the transit authority under the Transit Authority Law, as may thereafter be expanded.

(2)(a) At any time after a transit authority established under the Transit Authority Law has converted into a regional metropolitan transit authority, any municipality that is within the same metropolitan statistical area or combined statistical area as such regional metropolitan transit authority may decide, by a two-thirds vote of its governing body, to request to join such regional metropolitan transit authority. Upon approval of such request by a two-thirds vote of the

board of directors of such regional metropolitan transit authority, the operating jurisdiction of such regional metropolitan transit authority shall be deemed to extend to all areas within the boundaries of such municipality, as may thereafter be expanded.

(b) At any time after a municipality has joined a regional metropolitan transit authority pursuant to subdivision (2)(a) of this section, such municipality may decide, by a two-thirds vote of its governing body, to leave such regional metropolitan transit authority. Following such vote, the governing body shall transmit a copy of the resolution to leave the regional metropolitan transit authority to the board of such regional metropolitan transit authority. As provided in subsection (2) of section 18-808, the operating jurisdiction of such regional metropolitan transit authority shall no longer extend to areas within the boundaries of such municipality.

(3) Any regional metropolitan transit authority established pursuant to this section shall have full and exclusive jurisdiction and control over all public passenger transportation facilities and systems that are owned, controlled, operated, or acquired by such regional metropolitan transit authority or that are located in any municipality in which such authority shall be deemed to have operating jurisdiction pursuant to this section, excluding taxicabs, transportation network companies, and interstate railroad systems, with the right and duty to charge and collect revenue for the operation and maintenance of such systems and for the benefit of the holders of any of its revenue bonds or other liabilities.

Source: Laws 2019, LB492, § 4.
Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-805 Act, how construed; limit on creation of authority.

(1) Nothing in the Regional Metropolitan Transit Authority Act shall be construed to prohibit any municipality from contracting directly for passenger transportation services with a transit authority established under the Transit Authority Law or with any regional metropolitan transit authority, other than a municipality in which the operating jurisdiction of a regional metropolitan transit authority has been extended pursuant to section 18-804.

(2) No more than one regional metropolitan transit authority shall be created within a single metropolitan statistical area or combined statistical area.

Source: Laws 2019, LB492, § 5.
Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-806 Calculation of allowable growth under Nebraska Budget Act.

For purposes of calculating allowable growth under the Nebraska Budget Act, the following shall be treated as an annexation of territory by a regional metropolitan transit authority:

(1) If the municipality that established the transit authority prior to the conversion of such authority into a regional metropolitan transit authority annexes additional territory after such conversion; or

(2) If any other municipality which joined such regional metropolitan transit authority pursuant to subsection (2) of section 18-804 annexes additional territory after joining such regional metropolitan transit authority.

Source: Laws 2019, LB492, § 6.
Effective date September 1, 2019.

Cross References

Nebraska Budget Act, see section 13-501.

18-807 Regional metropolitan transit board; name; temporary board; vacancy.

(1) The governing body of a regional metropolitan transit authority shall be a board to be known as the Regional Metropolitan Transit Board of (filling out the blank to coincide with the name of such regional metropolitan transit authority).

(2) As of the effective date of the conversion of a transit authority established under the Transit Authority Law into a regional metropolitan transit authority under section 18-804, the board of the existing transit authority shall serve as the temporary board to govern the regional metropolitan transit authority until a board is elected pursuant to section 18-808.

(3) Any vacancy on the temporary board of a regional metropolitan transit authority shall be filled by appointment by the mayor of the city that appointed the members of such temporary board, with the approval of the governing bodies of such municipalities, to serve the unexpired portion of the temporary board member’s term.

Source: Laws 2019, LB492, § 7.
Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-808 Board; districts; redrawn; when; vacancy; appointment.

(1) Following the effective date of a conversion of a transit authority established under the Transit Authority Law into a regional metropolitan transit authority, the election commissioner or county clerk of the county in which the majority of the territory of the authority is located shall divide the territory of the authority into seven numbered districts for the purpose of electing members to the board. Such districts shall be compact and contiguous and substantially equal in population. The newly established districts shall be certified to the Secretary of State following such creation. The newly established districts shall apply beginning with the nomination and election of board members at the next statewide primary and general elections held at least seventy days after the effective date of such conversion. Following the drawing of initial districts pursuant to this section, additional redistricting shall be undertaken by the board according to section 32-553. One member shall be elected from each district as provided in section 32-551.

(2) Upon the joining of a municipality or municipalities to an existing regional metropolitan transit authority by agreement pursuant to subdivision (2)(a) of section 18-804, or upon a municipality leaving such regional metropolitan transit authority by vote pursuant to subdivision (2)(b) of section 18-804, the board shall redraw the boundaries of the districts to ensure that such

districts remain compact and contiguous and substantially equal in population. The redrawn districts shall be certified to the Secretary of State within six months following the joining or leaving of such municipality or municipalities and shall apply beginning with the nomination and election of board members at the next statewide primary and general elections held at least seventy days after the certification of the districts.

(3) A vacancy in office for an elected member of the board shall occur as set forth in section 32-560. Whenever any such vacancy occurs, the remaining members of the board shall appoint an individual residing within the geographical boundaries of the district in which the vacancy occurred for the balance of the unexpired term.

Source: Laws 2019, LB492, § 8.

Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-809 Board; member; oath; bond.

Each member of the board, before entering upon the duties of office, shall file with the city clerk or village clerk of the municipality in which he or she resides an oath that he or she will duly and faithfully perform all the duties of the office to the best of his or her ability and a bond in the penal sum of five thousand dollars executed by one or more qualified sureties for the faithful performance of his or her duties. If any member fails to file such oath and bond on or before the first day of the term for which he or she was appointed or elected, his or her office shall be deemed to be vacant.

Source: Laws 2019, LB492, § 9.

Effective date September 1, 2019.

18-810 Board; organization; quorum; meetings; minutes; public records.

(1) Not later than seven days after the qualification of the members, the board shall organize for the transaction of business, shall select a chairperson and vice-chairperson from among its members, and shall adopt bylaws, rules, and regulations to govern its proceedings. The chairperson and vice-chairperson and their successors shall be elected annually by the board and shall serve for a term of one year. Any vacancy in the office of chairperson or vice-chairperson shall be filled by election by the board for the remainder of the term.

(2) A quorum for the transaction of business shall consist of four members of the board, unless such board is a temporary board under section 18-807, in which case a quorum shall consist of three members of the board.

(3) Regular meetings of the board shall be held at least once in each calendar month at a time and place to be fixed by the board.

(4) All actions of the board shall be by resolution except as may otherwise be provided in the Regional Metropolitan Transit Authority Act, and the affirmative vote of a majority of the board members shall be necessary for the adoption of any resolution.

(5) The board shall keep accurate minutes of all its proceedings. All resolutions and all proceedings of a regional metropolitan transit authority and all official documents and records of such authority shall be public records and

open to public inspection, except for such documents which may be withheld from the public pursuant to section 84-712.05.

Source: Laws 2019, LB492, § 10.

Effective date September 1, 2019.

18-811 Board; member; conflict of interest.

No member of the board and no officer or employee of a regional metropolitan transit authority shall have any private financial interest, profit, or benefit in any contract, work, or business of such authority or in the sale or lease of any property to or from such authority.

Source: Laws 2019, LB492, § 11.

Effective date September 1, 2019.

18-812 Regional metropolitan transit authority; powers.

For purposes of the Regional Metropolitan Transit Authority Act, a regional metropolitan transit authority shall possess all of the necessary powers of a public body corporate and politic and governmental subdivision of the State of Nebraska, including, but not limited to:

(1) To maintain a principal office and, if necessary, satellite offices in the municipality or municipalities which form the authority;

(2) To adopt an official seal;

(3) To employ a general manager, engineers, accountants, attorneys, financial experts, and such other employees and agents as may be necessary and to fix the compensation of such employees and agents;

(4) To adopt, amend, and repeal bylaws, rules, and regulations for the regulation of its affairs and for the conduct of its business;

(5) To acquire, lease, own, maintain, and operate for public service a public transit system, excluding taxicabs, transportation network companies, and interstate railroad systems, within any municipality in which such authority (a) is deemed to have operating jurisdiction pursuant to section 18-804 or (b) is permitted to provide service under the Regional Metropolitan Transit Authority Act;

(6) To sue and be sued in its own name, but execution shall not, in any case, issue against any of its property, except that the lessor, vendor, or trustee under any agreement, lease, conditional sales contract, conditional lease contract, or equipment trust certificate, as provided for in subdivision (15) of this section, may repossess the equipment described therein upon default;

(7) To acquire, lease, and hold such real or personal property wherever located and any rights, interests, or easements therein as may be necessary or convenient for the purpose of the authority, including, but not limited to, the acquisition, leasing, and holding of any real property along a planned future public transit route, and to sell, assign, and convey such property;

(8) To make and enter into any and all contracts and agreements with (a) any individual, (b) any public or private corporation or agency of the State of Nebraska, (c) any public or private corporation or agency of any state of the United States that is adjacent to any municipality or municipalities (i) which form the authority in which such authority has operating jurisdiction pursuant to section 18-804 or (ii) in which such authority may otherwise be operating or

providing service, and (d) the United States Government, as may be necessary or incidental to the performance of the duties of the authority and the execution of its powers under the Regional Metropolitan Transit Authority Act and to enter into agreements under the Interlocal Cooperation Act or the Joint Public Agency Act;

(9) To contract with an operating and management company for the purpose of operating, servicing, and maintaining any public transit system of the authority;

(10) To borrow money and issue and sell negotiable revenue bonds, notes, or other evidence of indebtedness, to provide for the rights of the holders thereof, and to pledge all or any part of the income of the authority received under the Regional Metropolitan Transit Authority Act to secure the payment thereof;

(11) To receive and accept from the United States Government or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation, donations or loans or grants for or in aid of the acquisition or operation of public transit facilities, and to administer, hold, use, and apply the same for the purposes for which such grants or donations may have been made;

(12) To exercise the right of eminent domain under and pursuant to the laws of the State of Nebraska to acquire private property, including any existing private passenger transportation system, but excluding any taxicabs, transportation network companies, railroads, and air passenger transportation systems, which is necessary for the public transit purposes of the authority, including the right to acquire rights and easements across, under, or over the rights-of-way of any railroad. Exercise of the right of eminent domain shall be pursuant to sections 76-704 to 76-724;

(13) To use for transportation of passengers and services or improvements related to such transportation, any public road, public street, or other public way in any municipality in which such authority is (a) deemed to have operating jurisdiction pursuant to section 18-804 or (b) permitted to provide service under the Regional Metropolitan Transit Authority Act, subject in all cases to the continuing rights of the public to the use thereof;

(14) To purchase and dispose of equipment and to execute any agreement, lease, conditional sales contract, conditional lease contract, or equipment trust note or certificate to effect such purpose;

(15) To pay for any equipment and rentals in installments and to give evidence by equipment trust notes or certificates of any deferred installments. Title to such equipment need not vest in the authority until the equipment trust notes or certificates are paid;

(16) To levy an annual property tax pursuant to section 18-822 for the fiscal year commencing on the following January 1, not to exceed in any one year ten cents on each one hundred dollars on the taxable value of the taxable property that at the time of the levy is located in, or during the ensuing fiscal year will be located in, any municipality in which such authority is deemed to have operating jurisdiction pursuant to section 18-804;

(17) To apply for and accept grants and loans from the United States Government, or any agency or instrumentality thereof, to be used for any of the authorized purposes of the authority, and to enter into any agreement with the United States Government, or any agency or instrumentality thereof, in relation

to such grants or loans, subject to the Regional Metropolitan Transit Authority Act;

(18) To determine routes of any public transit system of the authority and to change such routes subject to the Regional Metropolitan Transit Authority Act;

(19) To fix rates, fares, and charges for any public transit system and related facilities of the authority;

(20) To provide free transportation for firefighters and police officers in uniform in the municipality or municipalities served by the authority in which they are employed or upon presentation of proper firefighter or police officer identification and for employees of such authority when in uniform;

(21) To enter into agreements with the United States Postal Service or its successors for the transportation of mail and letter carriers and the payment therefor;

(22) To exercise all powers usually granted to corporations, public and private, necessary or convenient to carry out the powers granted by the Regional Metropolitan Transit Authority Act; and

(23) To establish pension and retirement plans for officers and employees and to adopt any existing pension and retirement plans and any existing pension and retirement contracts for officers and employees of any passenger transportation system purchased or otherwise acquired pursuant to the Regional Metropolitan Transit Authority Act.

Source: Laws 2019, LB492, § 12.

Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

18-813 Revenue; use.

The revenue derived from rates, fares, and charges fixed under subdivision (19) of section 18-812, from property taxes levied pursuant to section 18-822, from any grants or loans received under subdivision (17) of section 18-812, and from any donations or other funds received from other sources shall at all times be sufficient in the aggregate to provide for the payment of (1) all operating costs of the regional metropolitan transit authority, (2) interest on the principal of all revenue bonds, revenue certificates, equipment trust notes or certificates, and other obligations of the authority, and all other charges upon such revenue as may be provided by any trust agreement executed by such authority in connection with the issuance of revenue bonds or certificates under the Regional Metropolitan Transit Authority Act, and (3) any other costs and charges, acquisitions, installations, replacements, or reconstruction of equipment, structures, or rights-of-way not financed through the issuance of revenue bonds or certificates.

Source: Laws 2019, LB492, § 13.

Effective date September 1, 2019.

18-814 Retirement plan; report; contents; Auditor of Public Accounts; powers.

(1) Beginning on the first December 31 following the date of the conversion of a transit authority established under the Transit Authority Law into a

regional metropolitan transit authority, and each December 31 thereafter, for a retirement plan established pursuant to subdivision (23) of section 18-812 or pursuant to subdivision (24) of section 14-1805 by any regional metropolitan transit authority which is a defined benefit plan, the chairperson of the board or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(a) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(b) A copy of a full actuarial analysis of each such defined benefit plan. 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 which offers investment advice or provides investment management services to the retirement plan.

(2) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the authority does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the authority. All costs of the audit shall be paid by the authority.

Source: Laws 2019, LB492, § 14.

Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-815 Regional metropolitan transit authority; finances; powers; issue bonds or certificates; powers and duties.

(1) A regional metropolitan transit authority shall have the continuing power to borrow money for the purpose of acquiring any transportation system and necessary cash or working funds, for reconstructing, extending, or improving any public transit system of the authority or any part thereof, and for acquiring any property and equipment useful for the reconstruction, extension, improvement, and operation of any public transit system of the authority or any part thereof.

(2) For purposes of evidencing the obligation of the authority to repay any money borrowed under this section, the authority may, pursuant to resolution adopted by the board from time to time, issue and dispose of its interest-bearing revenue bonds or certificates. The authority may also from time to time issue and dispose of its interest-bearing revenue bonds or certificates to refund any revenue bonds or certificates at maturity, or pursuant to redemption provisions, or at any time before maturity with the consent of the holders thereof.

(3) All such revenue bonds and certificates shall be payable solely from the revenue or income to be derived from the public transit system and related facilities, including, but not limited to, the revenue derived from rates, fares,

and charges fixed under subdivision (19) of section 18-812, from property taxes levied pursuant to section 18-822, from any grants or loans received under subdivision (17) of section 18-812, and from any donations or other funds received from other sources. Such revenue bonds and certificates may bear such date or dates, may mature at such time or times as may be fixed by the board, may bear interest at such rate or rates as may be fixed by the board, payable semiannually, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be made subject to redemption in such manner and upon such terms with or without premium as is stated on the face thereof, may be authenticated in such manner, and may contain such terms and covenants as may be provided in such resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that they are nonnegotiable, all such revenue bonds and certificates shall be negotiable instruments.

(4) Pending the preparation and execution of any such revenue bonds or certificates, temporary bonds or certificates may be issued with or without interest coupons as may be provided by resolution of the board. To secure the payment of any or all of such temporary bonds or certificates, and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance thereof and the issuance of any additional temporary bonds or certificates, as well as the use and application of the revenue or income to be derived from the public transit system, from property taxes levied, and from any grants or loans, as provided in the Regional Metropolitan Transit Authority Act, the authority may execute and deliver a trust agreement or agreements. No lien upon any physical property of the authority shall be created by such trust agreement or agreements. A remedy for any breach or default of the terms of any such trust agreement by the authority may be by mandamus or other appropriate proceedings in any court of competent jurisdiction to compel performance and compliance therewith. The trust agreement may prescribe by whom or on whose behalf such action may be instituted.

Source: Laws 2019, LB492, § 15.

Effective date September 1, 2019.

18-816 Revenue bonds or certificates; statement required.

Under no circumstances shall any revenue bonds or certificates issued by a regional metropolitan transit authority or any other obligation of such authority be or become an indebtedness or obligation of the State of Nebraska, or of any other political subdivision or body corporate and politic or of any municipality within the state, nor shall any such revenue bond, certificate, or obligation be or become an indebtedness of the authority within the purview of any constitutional limitation or provision, and it shall be plainly stated on the face of each revenue bond and certificate that it does not constitute such an indebtedness or obligation but is payable solely from revenue and income and other sources of revenue of such authority as provided in subsection (3) of section 18-815.

Source: Laws 2019, LB492, § 16.

Effective date September 1, 2019.

18-817 Revenue bonds or certificates; sale as unit after advertising for bids.

Before any revenue bonds or certificates, excepting refunding bonds or certificates, are sold pursuant to section 18-815, the entire authorized issue, or any part thereof, shall be offered for sale as a unit after advertising for bids at least three times in a legal newspaper in or of general circulation in the municipality or municipalities served by the regional metropolitan transit authority, the last publication to be at least ten days before bids are required to be filed. Copies of such advertisement may also be published in any newspaper or financial publication in the United States. All bids shall be sealed, filed, and opened as provided by resolution adopted by the board, and the revenue bonds or certificates shall be awarded to the highest and best bidder or bidders therefor. The authority shall have the right to reject all bids and readvertise for bids in the manner provided for in the initial advertisement. If no bids are received, such revenue bonds or certificates may be sold at the best possible price according to the discretion of the board, without further advertising, and within thirty days after the bids are required to be filed pursuant to any advertisement.

Source: Laws 2019, LB492, § 17.

Effective date September 1, 2019.

18-818 Revenue bonds; securities.

(1) Revenue bonds issued by a regional metropolitan transit authority under the Regional Metropolitan Transit Authority Act are hereby made securities in which (a) the state and all its political subdivisions and their officers, boards, commissions, departments, or other agencies, (b) all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, insurance associations, and other persons carrying on an insurance business, (c) all administrators, executors, guardians, trustees, and other fiduciaries, and (d) all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligation of the state, may properly and legally invest any funds, including capital belonging to them or within their control.

(2) Such revenue bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency of the state for any purpose for which the deposit of bonds or other obligations of the state is authorized by law.

Source: Laws 2019, LB492, § 18.

Effective date September 1, 2019.

18-819 Exemption from assessment and taxation.

All property of a regional metropolitan transit authority created pursuant to the Regional Metropolitan Transit Authority Act, all such authority's revenue, income, and operations, and all such authority's revenue bonds and equipment trust notes or certificates shall be exempt from any and all forms of assessment and taxation by the state or any political subdivision thereof.

Source: Laws 2019, LB492, § 19.

Effective date September 1, 2019.

18-820 Use of revenue; agreements, leases, contracts, and equipment trust notes or certificates; authorized.

(1) A regional metropolitan transit authority may purchase equipment, may execute agreements, leases, conditional sales contracts, conditional lease contracts, and equipment trust notes or certificates in the form customarily used in such cases appropriate to effect such purchase, and may dispose of such equipment trust notes or certificates. All money required to be paid by the authority under such agreements, leases, and equipment trust notes or certificates shall be payable solely from the revenue or income to be derived from the public transit system and related facilities of the authority, including, without limitation, the revenue derived from rates, fares, and charges fixed under subdivision (19) of section 18-812, from property taxes levied pursuant to section 18-822, from any grants or loans received under subdivision (17) of section 18-812, and from any donations or other funds received from other sources. Payment for such equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust notes or certificates payable solely from such sources of income, and title to such equipment need not vest in the authority until the equipment trust notes or certificates are paid, but when payment is accomplished the equipment title shall vest in the authority.

(2) Any such agreement to purchase equipment may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in the State of Nebraska, as trustee, for the benefit and security of the equipment trust notes or certificates, may direct the trustee to deliver the equipment to one or more designated officers of the authority, and may authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the authority.

(3) Any such agreements, leases, contracts, or equipment trust notes or certificates shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds, and in the form required for acknowledgment of deeds, and such agreements, leases, contracts, and equipment trust notes or certificates shall be authorized by resolution of the board and shall contain such covenants, conditions, and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust notes or certificates from the revenue and income of the authority.

(4) The covenants, conditions, and provisions of such agreements, leases, contracts, and equipment trust notes or certificates shall not conflict with any of the provisions of any trust agreement securing the payment of revenue bonds or certificates of the authority.

Source: Laws 2019, LB492, § 20.

Effective date September 1, 2019.

18-821 Fiscal operating year; established; budget; certain expenditures; vote required; report and financial statement.

(1) At least thirty days prior to the beginning of the first full fiscal year following the effective date of the conversion of a transit authority established under the Transit Authority Law into a regional metropolitan transit authority, the board shall establish a fiscal operating year, and annually thereafter the board shall cause to be prepared a tentative budget which shall include all operation and maintenance expenses for the ensuing fiscal year. The tentative budget shall be considered by the board and, subject to any revision and amendments adopted by the board, shall be adopted prior to the first day of the

ensuing fiscal year as the budget for that year. No expenditure for operations and maintenance in excess of the budget shall be made during any fiscal year except by a two-thirds vote of the board. It shall not be necessary to include in the annual budget any statement of interest or principal payments on revenue bonds or certificates or for capital outlays, but the board shall make provision for payment of the same from appropriate funds.

(2) As soon after the end of each fiscal year as practicable, the board shall cause to be prepared and printed a complete and detailed report and financial statement of its operations and of its assets and liabilities. A reasonably sufficient number of copies of such report shall be printed for distribution to persons interested upon request, and a copy shall be mailed to the mayor of the city or chairperson of the village board of trustees and the governing body of the municipality or municipalities that form the authority.

Source: Laws 2019, LB492, § 21.

Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

18-822 Tax levy.

(1) To assist in defraying the expenses of a regional metropolitan transit authority, and to such extent as in its discretion and judgment may be necessary, the board shall annually certify a tax levy for the fiscal year commencing on the following January 1. Such levy shall not exceed in any one year ten cents on each one hundred dollars on the taxable value of the taxable property that at the time of the levy is located in or during the ensuing fiscal year will be located in any municipality in which such authority shall be deemed to have operating jurisdiction pursuant to section 18-804.

(2) The board shall by resolution, on or before September 20 of each year, certify such tax levy to the county assessor of the county or counties in which the authority operates. If in any year the full amount so certified and collected is not needed for the current purposes of such authority, the balance shall be credited to the operating fund of such authority and, as the board in its discretion deems convenient, to other reserve funds of such authority.

Source: Laws 2019, LB492, § 22.

Effective date September 1, 2019.

18-823 Rules and regulations.

The board shall adopt rules and regulations governing the operation of any public transit system of the regional metropolitan transit authority and shall determine all routes of such system. The board shall, subject to subdivision (19) of section 18-812, fix all rates, fares, and charges for transportation on such system.

Source: Laws 2019, LB492, § 23.

Effective date September 1, 2019.

18-824 Board; rehabilitate, reconstruct, and modernize system; establish depreciation policy.

(1) The board shall, as promptly as possible, rehabilitate, reconstruct, and modernize all portions of any transportation system acquired by the regional

metropolitan transit authority, maintain at all times an adequate and modern public transit system suitable and adapted to the needs of the municipality or municipalities that form such authority, and provide for safe, comfortable, convenient, and expeditious transit service.

(2) To ensure a modern, attractive public transit system, the board may establish a depreciation policy which makes provision for the continuous and prompt replacement of worn out and obsolete property. The board may make provision for such depreciation of property as is not offset by current expenditures for maintenance, repairs, and replacements under such rules and regulations as may be prescribed by the board.

Source: Laws 2019, LB492, § 24.

Effective date September 1, 2019.

18-825 Employees; effect on collective-bargaining agreement.

(1) The board may negotiate and enter into written contracts with the employees of a regional metropolitan transit authority through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees concerning wages, salaries, hours, and general working conditions. All employees of all classes serving any passenger transportation company at the time of its acquisition by such authority shall continue in their respective positions and at their respective compensation for three months after any such acquisition. Thereafter, the board shall exercise its discretion as to retention of and compensation of all classes, except that the terms and conditions of any existing collective-bargaining agreement between any passenger transportation company acquired by such authority and its employees shall be recognized and accepted by the board.

(2) Nothing contained in this section shall be construed to amend, alter, modify, or affect in any way whatsoever the provisions of any collective-bargaining agreement or the employment relationship between the authority and any of its officers or other employees, whether or not such employees are members of a collective-bargaining unit, including, but not limited to, the terms of any deferred compensation, pension, or retirement plans.

Source: Laws 2019, LB492, § 25.

Effective date September 1, 2019.

ARTICLE 12

MISCELLANEOUS TAXES

Section

18-1208. Occupation tax; imposition or increase; election; procedure; annual report; contents.

18-1208 Occupation tax; imposition or increase; election; procedure; annual report; contents.

(1) Except as otherwise provided in this section, after July 19, 2012, a municipality may impose a new occupation tax or increase the rate of an existing occupation tax, which new occupation tax or increased rate of an existing occupation tax is projected to generate annual occupation tax revenue in excess of the applicable amount listed in subsection (2) of this section, pursuant to section 14-109, 15-202, 15-203, 16-205, or 17-525 if the question of

whether to impose the tax or increase the rate of an existing occupation tax has been submitted at an election held within the municipality and in which all registered voters shall be entitled to vote on the question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax or tax rate increase to the election commissioner or county clerk at least fifty days before the election. The election shall be conducted in accordance with the Election Act. If a majority of the votes cast upon the question are in favor of the new tax or increased rate of an existing occupation tax, then the governing body of such municipality shall be empowered to impose the new tax or to impose the increased tax rate. If a majority of those voting on the question are opposed to the new tax or increased rate, then the governing body of the municipality shall not impose the new tax or increased rate but shall maintain any existing occupation tax at its current rate.

(2) The applicable amount of annual revenue for each new occupation tax or annual revenue raised by the increased rate for an existing occupation tax for purposes of subsection (1) of this section is:

- (a) For cities of the metropolitan class, six million dollars;
- (b) For cities of the primary class, three million dollars;
- (c) For cities of the first class, seven hundred thousand dollars; and
- (d) For cities of the second class and villages, three hundred thousand dollars.

(3) After July 19, 2012, a municipality shall not be required to submit the following questions to the registered voters:

- (a) Whether to change the rate of an occupation tax imposed for a specific project which does not provide for deposit of the tax proceeds in the municipality's general fund; or
- (b) Whether to terminate an occupation tax earlier than the determinable termination date under the original question submitted to the registered voters.

This subsection applies to occupation taxes imposed prior to, on, or after July 19, 2012.

(4) The provisions of this section do not apply to an occupation tax subject to section 86-704.

(5) No later than ninety days after the end of the fiscal year, each municipality that imposes or increases any occupation tax as provided under this section shall provide an annual report on the collection and use of such occupation tax. The report shall be posted on the municipality's public web site or made available for public inspection at a location designated by the municipality. The report shall include, but not be limited to:

- (a) A list of all such occupation taxes collected by the municipality;
- (b) The amount generated annually by each such occupation tax;
- (c) Whether funds generated by each such occupation tax are deposited in the general fund, cash funds, or other funds of the municipality;
- (d) Whether any such occupation tax is dedicated for a specific purpose, and if so, the amount dedicated for such purpose; and

(e) The scheduled or projected termination date, if any, of each such occupation tax.

Source: Laws 2012, LB745, § 1; Laws 2019, LB445, § 1.
Effective date September 1, 2019.

Cross References

Election Act, see section 32-101.

ARTICLE 17
MISCELLANEOUS

Section

18-1720. Nuisances; definition; prevention; abatement; joint and cooperative action with county.

18-1758. Short-term rentals; municipality; ordinance or other regulation; powers.

18-1720 Nuisances; definition; prevention; abatement; joint and cooperative action with county.

(1) All cities and villages in this state are hereby granted power and authority by ordinance to define, regulate, suppress and prevent nuisances, and to declare what shall constitute a nuisance, and to abate and remove the same. Every city and village is authorized to exercise such power and authority within its zoning jurisdiction.

(2) Any city or village may enter into an interlocal agreement pursuant to the Interlocal Cooperation Act with a county in which the extraterritorial zoning jurisdiction of the city or village is located to provide for joint and cooperative action to abate, remove, or prevent nuisances within such extraterritorial zoning jurisdiction. The governing body of such city or village and the county board of such county shall first approve such interlocal agreement by ordinance or resolution.

Source: Laws 1939, c. 10, § 1, p. 77; C.S.Supp.,1941, § 19-1201; R.S. 1943, § 19-1201; Laws 1969, c. 115, § 1, p. 529; Laws 2019, LB11, § 1.
Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

18-1758 Short-term rentals; municipality; ordinance or other regulation; powers.

(1) For purposes of this section:

(a) Municipality means a city or village; and

(b) Short-term rental means a residential property, including a single-family dwelling or a unit in a condominium, cooperative, or time-share, that is rented wholly or partly for a fee for a period not longer than thirty consecutive days.

(2) A municipality shall not adopt or enforce an ordinance or other regulation that expressly or effectively prohibits the use of a property as a short-term rental.

(3) A municipality may adopt or enforce an ordinance or other regulation that specifically regulates property used as a short-term rental only if the

municipality demonstrates that the primary purpose of the ordinance or other regulation is to protect the public’s health and safety. An ordinance or other regulation authorized by this subsection includes:

- (a) Requirements addressing:
 - (i) Fire and building codes;
 - (ii) Health and sanitation;
 - (iii) Traffic control; and
 - (iv) Solid or hazardous waste and pollution control; and
- (b) Requirements regarding the designation of an emergency contact for the property.

(4) A municipality may adopt or enforce an ordinance or other regulation that imposes a sales tax or an occupation tax on short-term rentals if the tax is otherwise permitted by applicable law.

(5) A municipality may adopt or enforce an ordinance or other regulation that limits or prohibits the use of a short-term rental only if the law limits or prohibits the use of a short-term rental for the purpose of:

- (a) Housing sex offenders;
- (b) Operating a structured sober living home or similar enterprise;
- (c) Selling illegal drugs;
- (d) Selling alcohol or another activity that requires a permit or license under the Nebraska Liquor Control Act; or
- (e) Operating a sexually oriented business.

(6) A municipality shall apply an ordinance or other regulation regulating land use to a short-term rental in the same manner as another similar property. An ordinance or other regulation described by this subsection includes:

- (a) Residential use and other zoning matters;
- (b) Noise and other nuisances; and
- (c) Property maintenance.

(7) This section shall not be construed to affect regulations of a private entity, including a homeowners association organized under the Condominium Property Act or the Nebraska Condominium Act.

Source: Laws 2019, LB57, § 1.
Effective date September 1, 2019.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.
Nebraska Liquor Control Act, see section 53-101.

ARTICLE 21
COMMUNITY DEVELOPMENT

Section	
18-2101.	Act, how cited.
18-2101.02.	Extremely blighted area; governing body; duties; review; public hearing; map.
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.

Section

- 18-2103. Terms, defined.
18-2115.01. Notice; manner.
18-2117.04. City; retain plans and documents.

18-2101 Act, how cited.

Sections 18-2101 to 18-2154 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1; Laws 2013, LB66, § 1; Laws 2018, LB496, § 1; Laws 2018, LB874, § 4; Laws 2019, LB86, § 1.
Effective date September 1, 2019.

18-2101.02 Extremely blighted area; governing body; duties; review; public hearing; map.

(1) For any city that (a) intends to carry out a redevelopment project which will involve the construction of workforce housing in an extremely blighted area as authorized under subdivision (28)(g) of section 18-2103, (b) intends to declare an area as an extremely blighted area for purposes of funding decisions under subdivision (1)(b) of section 58-708, or (c) intends to declare an area as an extremely blighted area in order for individuals purchasing residences in such area to qualify for the income tax credit authorized in subsection (7) of section 77-2715.07, the governing body of such city shall first declare, by resolution adopted after the public hearings required under this section, such area to be an extremely blighted area.

(2) Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is extremely blighted and shall submit the question of whether such area is extremely blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided in section 18-2115.01. Such notice shall include a map of sufficient size to show the area to be declared extremely blighted or information on where to find such map and shall provide information on where to find copies of the study or analysis conducted pursuant to this subsection. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.

(3) Upon receipt of the recommendations of the planning commission or board, or if no recommendations are received within thirty days after the public hearing required under subsection (2) of this section, the governing body shall hold a public hearing on the question of whether the area is extremely blighted after giving notice of the hearing as provided in section 18-2115.01. Such notice shall include a map of sufficient size to show the area to be declared extremely blighted or information on where to find such map and shall provide information on where to find copies of the study or analysis conducted pursuant to subsection (2) of this section. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed declaration. After such hearing, the governing body of the city may make its declaration.

(4) Copies of each study or analysis conducted pursuant to subsection (2) of this section shall be posted on the city’s public web site or made available for public inspection at a location designated by the city.

(5) The study or analysis required under subsection (2) of this section may be conducted in conjunction with the study or analysis required under section 18-2109. The hearings required under this section may be held in conjunction with the hearings required under section 18-2109.

Source: Laws 2019, LB86, § 2.

Effective date September 1, 2019.

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 plan 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 plan 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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. No member of any

authority established under this section shall also be a member of any planning commission created under section 19-925.

(7) 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.

(8) 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.

(9) 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 Auditor of Public Accounts may audit, or cause to be audited, any authority established under this section or any redevelopment plan of such authority when the Auditor of Public Accounts determines such audit is necessary or when requested by the governing body, and such audit shall be at the expense of the authority. 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; Laws 2017, LB383, § 1; Laws 2018, LB874, § 6; Laws 2019, LB193, § 8.
Effective date September 1, 2019.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

18-2103 Terms, defined.

For purposes of the Community Development Law, unless the context otherwise requires:

(1) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of sections 18-2123 and 18-2123.01;

(2) Authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(3) Blighted area means an area (a) which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the platted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted. A redevelopment project involving a formerly used defense site as authorized under section 18-2123.01 shall not count towards the percentage limitations contained in this subdivision;

(4) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(5) Business means any private business located in an enhanced employment area;

- (6) City means any city or incorporated village in the state;
- (7) Clerk means the clerk of the city or village;
- (8) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;
- (9) Employee means a person employed at a business as a result of a redevelopment project;
- (10) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services, including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;
- (11) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;
- (12) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;
- (13) Extremely blighted area means a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least two hundred percent of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area;
- (14) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;
- (15) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;
- (16) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;
- (17) Mayor means the mayor of the city or chairperson of the board of trustees of the village;
- (18) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;
- (19) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted;
- (20) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;
- (21) Occupation tax means a tax imposed under section 18-2142.02;

(22) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(23) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(24) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(25) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(26) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(27) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(28) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, enhancements to structures in the redevelopment plan area which exceed minimum building and design standards in the community and prevent the recurrence of substandard and blighted conditions, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in

connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; (f) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings in accordance with the redevelopment plan; and (g) in a rural community or in an extremely blighted area within a municipality that is not a rural community, to carry out construction of workforce housing;

(29) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(30) Rural community means any municipality in a county with a population of fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census;

(31) Substandard area means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare; and

(32) Workforce housing means:

(a) Housing that meets the needs of today's working families;

(b) Housing that is attractive to new residents considering relocation to a rural community;

(c) Owner-occupied housing units that cost not more than two hundred seventy-five thousand dollars to construct or rental housing units that cost not more than two hundred thousand dollars per unit to construct. For purposes of this subdivision (c), housing unit costs shall be updated annually by the Department of Economic Development based upon the most recent increase or decrease in the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics;

(d) Owner-occupied and rental housing units for which the cost to substantially rehabilitate exceeds fifty percent of a unit's assessed value; and

(e) Upper-story housing.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S. 1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2; Laws 2012, LB729, § 1; Laws 2013, LB66, § 2;

Laws 2014, LB1012, § 1; Laws 2018, LB496, § 2; Laws 2018, LB874, § 7; Laws 2019, LB86, § 3.
Effective date September 1, 2019.

18-2115.01 Notice; manner.

(1) Public notice of any hearing required under section 18-2101.02, 18-2109, or 18-2115 shall be given by publication at least once a week for two consecutive weeks in a legal newspaper in or of general circulation in the community. The time of the hearing shall be at least ten days from the last publication.

(2)(a) Notice of any hearing required under section 18-2101.02, 18-2109, or 18-2115 shall be given to neighborhood associations that have registered under subsection (5) of this section as follows:

(i) For a hearing under section 18-2109, notice shall be given to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be declared substandard and blighted;

(ii) For a hearing under section 18-2101.02, notice shall be given to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be declared extremely blighted; and

(iii) For a hearing under section 18-2115, notice shall be given to each registered neighborhood association whose area of representation is located in whole or in part within a one-mile radius of the area to be redeveloped.

(b) Notice under this subsection shall be given at least ten days prior to the hearing in the manner requested by the neighborhood association. The notice shall be deemed given on the date it is sent.

(3)(a) Notice of any hearing required under section 18-2101.02, 18-2109, or 18-2115 shall be given to political subdivisions as follows:

(i) For a hearing under section 18-2109, notice shall be given to the president or chairperson of the governing body of each county, school district, community college area, educational service unit, and natural resources district in which the real property to be declared substandard and blighted is located;

(ii) For a hearing under section 18-2101.02, notice shall be given to the president or chairperson of the governing body of each county, school district, community college area, educational service unit, and natural resources district in which the real property to be declared extremely blighted is located; and

(iii) For a hearing under section 18-2115, notice shall be given to the president or chairperson of the governing body of each county, school district, community college area, educational service unit, and natural resources district in which the real property subject to the redevelopment plan or substantial modification thereof is located.

(b) Notice under this subsection shall be given at least ten days prior to the hearing by certified mail, return receipt requested. The notice shall be deemed given on the date it is mailed by certified mail.

(4) All notices given under this section shall describe the time, date, place, and purpose of the hearing.

(5) Each neighborhood association desiring to receive notice of any hearing required under section 18-2101.02, 18-2109, or 18-2115 shall register with the

city's planning department or, if there is no planning department, with the city clerk. The registration shall include a description of the area of representation of the association, the name of and contact information for the individual designated by the association to receive the notice on its behalf, and the requested manner of service, whether by email, first-class mail, or certified mail. Registration of the neighborhood association for purposes of this section shall be accomplished in accordance with such other rules and regulations as may be adopted and promulgated by the city.

Source: Laws 2018, LB874, § 13; Laws 2019, LB86, § 4.
Effective date September 1, 2019.

18-2117.04 City; retain plans and documents.

(1) On and after October 1, 2018, each city that has approved one or more redevelopment plans or redevelopment projects that are financed in whole or in part through the division of taxes as provided in section 18-2147 shall retain copies of (a) all such redevelopment plans and (b) all supporting documents associated with the redevelopment plans or redevelopment projects, with any related substandard and blighted declaration under section 18-2109, and with any related extremely blighted declaration under section 18-2101.02 that are received or generated by the city.

(2) The city shall retain the redevelopment plans and supporting documents described in subsection (1) of this section for the period of time required under any applicable records retention schedule adopted under the Records Management Act or for three years following the end of the last fiscal year in which ad valorem taxes are divided, whichever period is longer.

(3) For purposes of this section, supporting document includes any substandard and blighted study or analysis conducted pursuant to section 18-2109, any extremely blighted study or analysis conducted pursuant to section 18-2101.02, any cost-benefit analysis conducted pursuant to section 18-2113, and any invoice, receipt, claim, or contract received or generated by the city that provides support for receipts or payments associated with the redevelopment plan or redevelopment project.

Source: Laws 2018, LB874, § 18; Laws 2019, LB86, § 5.
Effective date September 1, 2019.

Cross References

Records Management Act, see section 84-1220.

ARTICLE 25 INITIATIVE AND REFERENDUM

Section
18-2507. Municipal subdivision, defined.
18-2515. Petition; contents.

18-2507 Municipal subdivision, defined.

Municipal subdivision shall mean all cities, not operating under home rule charters, of metropolitan, primary, first, and second classes, including those functioning under the commission and city manager plans of government, and villages.

Source: Laws 1982, LB 807, § 7; Laws 2019, LB193, § 9.
Effective date September 1, 2019.

18-2515 Petition; contents.

(1) Each petition presented for signature must be identical to the petition authorized for circulation by the city clerk pursuant to section 18-2512.

(2) Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure.

(3) Every petition shall contain the caption and the statement specified in subdivisions (1)(a) and (1)(c) of section 18-2513.

(4) When a special election is being requested, such fact shall be stated on every petition.

Source: Laws 1982, LB 807, § 15; Laws 1984, LB 1010, § 9; Laws 2003, LB 444, § 1; Laws 2019, LB411, § 21.

Operative date September 1, 2019.

ARTICLE 27**MUNICIPAL ECONOMIC DEVELOPMENT**

Section

18-2705. Economic development program, defined.

18-2709. Qualifying business, defined.

18-2713. Election; procedures.

18-2705 Economic development program, defined.

(1) Economic development program means any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future.

(2) An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying businesses; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans to qualifying businesses for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; grants or loans to qualifying businesses to provide relocation incentives for new residents; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity.

(3) For cities of the first class, cities of the second class, and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income.

(4) For cities of the first class, cities of the second class, and villages, an economic development program may also include grants, loans, or funds for rural infrastructure development as defined in section 66-2102.

(5) For cities of the first class, cities of the second class, and villages, an economic development program may also include grants or loans for the

construction or rehabilitation for sale or lease of housing as part of a workforce housing plan.

(6) For cities of the first class, cities of the second class, and villages, an economic development program may also include grants, loans, or funds for early childhood infrastructure development.

(7) An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Source: Laws 1991, LB 840, § 6; Laws 1993, LB 732, § 17; Laws 1995, LB 207, § 3; Laws 2001, LB 827, § 13; Laws 2012, LB1115, § 8; Laws 2013, LB295, § 1; Laws 2015, LB150, § 1; Laws 2016, LB1059, § 4; Laws 2019, LB160, § 1.
Effective date September 1, 2019.

18-2709 Qualifying business, defined.

(1) Qualifying business means any corporation, partnership, limited liability company, or sole proprietorship which derives its principal source of income from any of the following: The manufacture of articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

(2) Qualifying business also means:

(a) In cities of the first class, cities of the second class, and villages, a business that derives its principal source of income from the construction or rehabilitation of housing;

(b) In cities of the first class, cities of the second class, and villages, a business that derives its principal source of income from early childhood care and education programs;

(c) A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve-month period and no more than twenty percent of the total revenue generated pursuant to the act for an economic development program in any five-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

(d) In cities with a population of two thousand five hundred inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.

(3) If a business which would otherwise be a qualifying business employs people and carries on activities in more than one city in Nebraska or will do so at any time during the first year following its application for participation in an economic development program, it shall be a qualifying business only if, in each such city, it maintains employment for the first two years following the date on which such business begins operations in the city as a participant in its economic development program at a level not less than its average employment in such city over the twelve-month period preceding participation.

(4) A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

(5) Qualifying business does not include a political subdivision, a state agency, or any other governmental entity, except as allowed for cities of the first class, cities of the second class, and villages for rural infrastructure development as provided for in subsection (4) of section 18-2705.

Source: Laws 1991, LB 840, § 10; Laws 1993, LB 121, § 145; Laws 1993, LB 732, § 18; Laws 1994, LB 1188, § 1; Laws 1995, LB 207, § 4; Laws 2001, LB 827, § 14; Laws 2011, LB471, § 2; Laws 2012, LB863, § 2; Laws 2015, LB150, § 2; Laws 2017, LB113, § 22; Laws 2019, LB160, § 2.

Effective date September 1, 2019.

18-2713 Election; procedures.

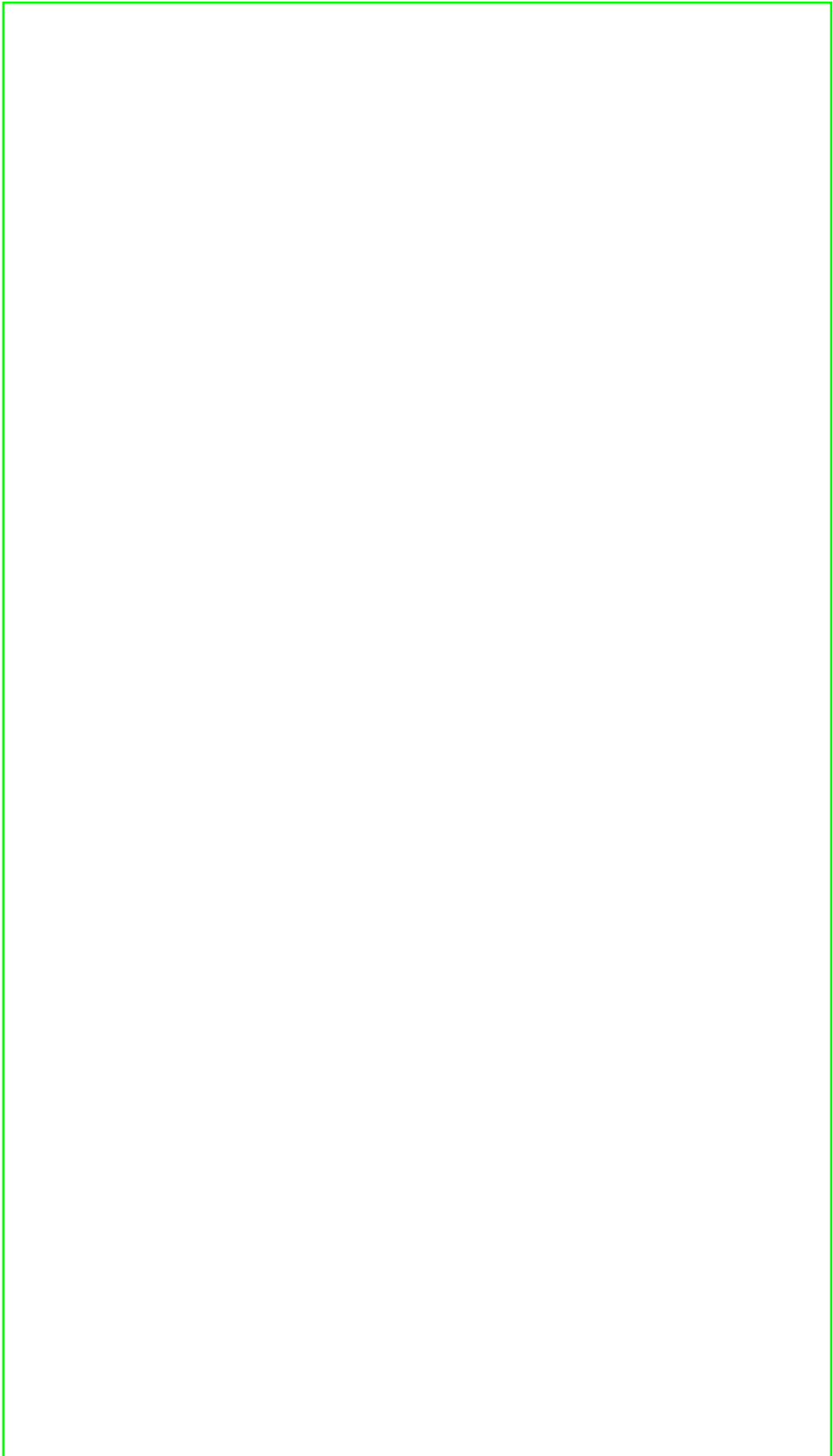
(1) Before adopting an economic development program, a city shall submit the question of its adoption to the registered voters at an election. The governing body of the city shall order the submission of the question by filing a certified copy of the resolution proposing the economic development program with the election commissioner or county clerk not later than fifty days prior to a special election or a municipal primary or general election which is not held at the statewide primary or general election or not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. The governing body of the city may determine not to submit the question at a particular election and order the removal of the question from the ballot by filing a certified copy of the resolution approving removing the question with the election commissioner or county clerk not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election.

(2) The question on the ballot shall briefly set out the terms, conditions, and goals of the proposed economic development program, including the length of time during which the program will be in existence, the year or years within which the funds from local sources of revenue are to be collected, the source or sources from which the funds are to be collected, the total amount to be collected for the program from local sources of revenue, and whether the city proposes to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program. The ballot question shall also specify whether additional funds from other noncity sources will be sought beyond those derived from local sources of revenue. In addition to all other information, if the funds are to be derived from the city's property tax, the ballot question shall state the present annual cost of the economic development program per ten thousand dollars of assessed valuation based upon the most recent valuation of the city certified to the

Property Tax Administrator pursuant to section 77-1613.01. The ballot question shall state: "Shall the city of (name of the city) establish an economic development program as described here by appropriating annually from local sources of revenue \$. for years?". If the only city revenue source for the proposed economic development program is a local option sales tax that has not yet been approved at an election, the ballot question specifications in this section may be repeated in the sales tax ballot question.

(3) If a majority of those voting on the issue vote in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution. If a majority of those voting on the economic development program vote in favor of the question when the only city revenue source is a proposed sales tax and a majority of those voting on the local option sales tax vote against the question, the governing body shall not implement the economic development program, and it shall become null and void. If a majority of those voting on the issue vote against the question, the governing body shall not implement the economic development program.

Source: Laws 1991, LB 840, § 14; Laws 1993, LB 732, § 22; Laws 1995, LB 490, § 23; Laws 2017, LB451, § 1; Laws 2019, LB411, § 22.
Operative date September 1, 2019.



CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE
TO MORE THAN ONE AND LESS THAN
ALL CLASSES

Article.

1. Municipal Development Funds. (Applicable to cities of the metropolitan or primary class.) Repealed.
2. Toll Bridges. (Applicable to cities of the metropolitan or first class.) 19-201.
4. Commission Form of Government. (Applicable to cities of 2,000 population or over.) 19-401 to 19-433.
5. Charter Convention. (Applicable to cities over 5,000 population.) 19-502, 19-503.
6. City Manager Plan. (Applicable to cities of 1,000 population or more and less than 200,000.)
 - (a) General Provisions. 19-601 to 19-604.
 - (b) Adoption and Abandonment of Plan. 19-605 to 19-610.
 - (c) City Council. 19-611 to 19-620.
 - (g) City Manager. 19-645 to 19-648.
 - (i) Petition for Abandonment. 19-662.
7. Eminent Domain. 19-701 to 19-710.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.) 19-901 to 19-932.
11. Treasurer's Report and Council Proceedings; Publication. 19-1101 to 19-1104.
13. Funds. (Applicable to cities of the first or second class and villages.) 19-1301 to 19-1312.
14. Light, Heat, and Ice. (Applicable to all except cities of the metropolitan class.) 19-1401 to 19-1404.
15. Incompletely Performed Contracts. (Applicable to all except cities of the metropolitan class.) 19-1501, 19-1502.
18. Civil Service Act. 19-1826 to 19-1846.
21. Garbage Disposal. (Applicable to cities of the first or second class and villages.) 19-2101 to 19-2106.
22. Correction of Corporate Limits. (Applicable to cities of the first or second class and villages.) 19-2201 to 19-2203.
23. Parking Meters. (Applicable to cities of the first or second class and villages.) 19-2302 to 19-2304.
24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2401 to 19-2432.
27. Public Utility Service.
 - (a) Contracts. (Applicable to cities of the first or second class.) 19-2701.
29. Nebraska Municipal Auditing Law. (Applicable to cities of the first or second class and villages.) 19-2901 to 19-2909.
30. Municipal Elections. (Applicable to cities of the first or second class and villages.) 19-3052.
31. Municipal Vacancies. (Applicable to cities of the first or second class and villages.) 19-3101.
33. Offstreet Parking. (Applicable to cities of the primary, first, or second class.)
 - (a) Offstreet Parking District Act. 19-3302 to 19-3326.
 - (b) Miscellaneous. 19-3327.
35. Pension Plans. (Applicable to cities of the first or second class and villages.) 19-3501.
37. Ordinances. (Applicable to cities of the first or second class and villages.) 19-3701.
38. Police Services. (Applicable to cities of the first or second class and villages.) 19-3801.
40. Business Improvement Districts. (Applicable to all cities.) 19-4017 to 19-4037.

Article.

- 46. Municipal Natural Gas. (Applicable to all except cities of the metropolitan class.)
(b) Municipal Natural Gas System Condemnation Act. 19-4629 to 19-4638.
- 47. Baseball. 19-4701.
- 50. Annexation. (Applicable to cities of the first or second class and villages.) 19-5001.

ARTICLE 1

MUNICIPAL DEVELOPMENT FUNDS

(Applicable to cities of the metropolitan or primary class.)

Section

- 19-101. Repealed. Laws 2019, LB193, § 244.
- 19-102. Repealed. Laws 2019, LB193, § 244.
- 19-103. Repealed. Laws 2019, LB193, § 244.
- 19-104. Repealed. Laws 2019, LB193, § 244.

19-101 Repealed. Laws 2019, LB193, § 244.

19-102 Repealed. Laws 2019, LB193, § 244.

19-103 Repealed. Laws 2019, LB193, § 244.

19-104 Repealed. Laws 2019, LB193, § 244.

ARTICLE 2

TOLL BRIDGES

(Applicable to cities of the metropolitan or first class.)

Section

- 19-201. Toll bridges; licensing; regulation.

19-201 Toll bridges; licensing; regulation.

The mayor and city council in any city of the metropolitan class or city of the first class shall have power to license and regulate the keeping of toll bridges within or terminating within the city for the passage of persons and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city, to fix and determine the rates of toll over any such bridge or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined from all persons passing over or using the same.

Source: Laws 1871, § 1, p. 26; R.S.1913, § 5273; C.S.1922, § 4496; C.S.1929, § 19-201; R.S.1943, § 19-201; Laws 1969, c. 111, § 1, p. 519; Laws 2019, LB193, § 10.
Effective date September 1, 2019.

ARTICLE 4

COMMISSION FORM OF GOVERNMENT

(Applicable to cities of 2,000 population or over.)

Section

- 19-401. Act, how cited; commission plan; population requirement.
- 19-402. Commission plan; petition for adoption; election; ballot form.
- 19-403. Commission plan; proposal for adoption; frequency.
- 19-404. Adoption of commission plan; effect.
- 19-405. City council members; nomination; candidate filing form; primary election; waiver.

Section

- 19-407. Repealed. Laws 2019, LB193, § 244.
- 19-409. City council members; candidates; terms.
- 19-411. City council members; bonds; vacancies, how filled.
- 19-412. Officers; employees; compensation.
- 19-413. City council; powers.
- 19-415. Mayor; city council members; powers and duties; heads of departments.
- 19-416. Officers; employees; appointment; compensation; removal.
- 19-417. Offices and boards; creation; discontinuance.
- 19-418. City council; meetings; quorum.
- 19-419. Mayor; city council members; office; duties.
- 19-421. Petitions; requirements; verification; costs.
- 19-422. Cities adopting the commission plan; laws applicable.
- 19-423. Appropriations and expenses; alteration; power of first city council.
- 19-432. Commission plan; discontinuance; petition; election.
- 19-433. Commission plan; discontinuance; petition; election; procedure.

19-401 Act, how cited; commission plan; population requirement.

Sections 19-401 to 19-433 shall be known and may be cited as the Municipal Commission Plan of Government Act.

Any city in this state having not less than two thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the commission plan of government and be governed thereunder as provided in the act.

Source: Laws 1911, c. 24, § 1, p. 150; R.S.1913, § 5288; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4511; Laws 1923, c. 141, § 1, p. 344; C.S.1929, § 19-401; R.S.1943, § 19-401; Laws 2017, LB113, § 23; Laws 2019, LB193, § 11.
Effective date September 1, 2019.

19-402 Commission plan; petition for adoption; election; ballot form.

If a petition to adopt the commission plan of government is filed with the city clerk of any city meeting the requirements of section 19-401, signed by registered voters equal in number to at least twenty-five percent of the votes cast for all candidates for mayor at the last preceding general city election, the mayor of the city shall, within twenty days after such filing, call and proclaim a special election to be held upon a date fixed in such proclamation, which date shall not be less than fifteen nor more than sixty days after the date and issuance of such proclamation. After the filing of any petition provided for in this section, no signer of such petition shall be permitted to withdraw his or her name from such petition. At such special election the proposition of adopting the commission plan of government shall be submitted to the registered voters of the city, and such proposition shall be stated as follows: Shall the city of (name of city) adopt the commission plan of city government? The special election shall be held and conducted, the vote canvassed, and the result declared in the same manner as provided for the holding and conducting of the general city election in any such city. All officers charged with any duty respecting the calling, holding, and conducting of such general city election shall perform such duties for and at such special election.

Source: Laws 1911, c. 24, § 2, p. 150; R.S.1913, § 5289; Laws 1919, c. 35, § 1, p. 113; C.S.1922, § 4512; C.S.1929, § 19-402; R.S.1943, § 19-402; Laws 1994, LB 76, § 507; Laws 2019, LB193, § 12.
Effective date September 1, 2019.

19-403 Commission plan; proposal for adoption; frequency.

If the proposition of adopting the commission plan of government is not adopted at the special election under section 19-402 by a majority vote, the question of adopting it shall not be again submitted in the same city within two years thereafter.

Source: Laws 1911, c. 24, § 3, p. 151; R.S.1913, § 5290; C.S.1922, § 4513; C.S.1929, § 19-403; R.S.1943, § 19-403; Laws 2019, LB193, § 13.

Effective date September 1, 2019.

19-404 Adoption of commission plan; effect.

If the proposition under section 19-402 is adopted for the commission plan of government at least sixty days prior to the next general city election in the city, then at the next general city election provided by law in such city, city council members shall be elected as provided in section 32-539. If the proposition is not adopted at least sixty days prior to the date of holding the next general city election in such city, then such city shall continue to be governed under its existing laws until city council members are elected as provided in section 32-539 at the next general city election thereafter occurring in such city.

Source: Laws 1911, c. 24, § 4, p. 151; Laws 1913, c. 21, § 1, p. 85; R.S.1913, § 5291; Laws 1919, c. 35, § 1, p. 114; C.S.1922, § 4514; Laws 1923, c. 141, § 2, p. 345; C.S.1929, § 19-404; R.S.1943, § 19-404; Laws 1955, c. 55, § 2, p. 176; Laws 1969, c. 257, § 14, p. 937; Laws 1979, LB 281, § 1; Laws 1979, LB 80, § 37; Laws 1994, LB 76, § 508; Laws 2019, LB193, § 14.
Effective date September 1, 2019.

19-405 City council members; nomination; candidate filing form; primary election; waiver.

(1) Any person desiring to become a candidate for the office of city council member under the commission plan of government shall file a candidate filing form as provided in sections 32-606 and 32-607 and pay the filing fee as provided in section 32-608.

(2) Candidates for city council under the commission plan of government shall be nominated at large either at the statewide primary election or by filing a candidate filing form if there are not more than two candidates who have filed for each position or if the city council waives the requirement for a primary election.

(3) The city council may waive the requirement for a primary election by adopting an ordinance prior to January 5 of the year in which the primary election would have been held. If the city council waives the requirement for a primary election, all candidates filing candidate filing forms by August 1 prior to the date of the general election as provided in subsection (2) of section 32-606 shall be declared nominated. If the city council does not waive the requirement for a primary election and if there are not more than two candidates filed for each position to be filled, all candidates filing candidate filing forms by the deadline prescribed in subsection (1) of section 32-606 shall

be declared nominated as provided in subsection (1) of section 32-811 and their names shall not appear on the primary election ballot.

Source: Laws 1911, c. 24, § 5, p. 152; Laws 1913, c. 21, § 2, p. 86; R.S.1913, § 5292; Laws 1919, c. 35, § 1, p. 115; C.S.1922, § 4515; Laws 1923, c. 141, § 3, p. 345; C.S.1929, § 19-405; R.S.1943, § 19-405; Laws 1969, c. 112, § 1, p. 519; Laws 1969, c. 257, § 15, p. 938; Laws 1979, LB 80, § 38; Laws 1989, LB 327, § 1; Laws 1994, LB 76, § 509; Laws 1999, LB 250, § 1; Laws 2019, LB193, § 15.
Effective date September 1, 2019.

19-407 Repealed. Laws 2019, LB193, § 244.

19-409 City council members; candidates; terms.

(1) In a city under the commission plan of government, the two candidates for city council member receiving the highest number of votes at the primary election shall be placed upon the official ballot for such position at the statewide general election. If no candidates appeared on the primary election ballot or if the city council waived the primary election under section 19-405, all persons filing pursuant to section 19-405 shall be the only candidates whose names shall be placed upon the official ballot for such position at the statewide general election.

(2) Terms for city council members under the commission plan of government shall begin on the date of the first regular meeting of the city council in December following the statewide general election. The changes made to this section by Laws 1999, LB 250, shall not change the staggering of the terms of city council members in cities that have adopted the commission plan of government prior to January 1, 1999.

Source: Laws 1911, c. 24, § 7, p. 155; Laws 1913, c. 21, § 3, p. 88; R.S.1913, § 5294; C.S.1922, § 4517; Laws 1923, c. 141, § 5, p. 348; C.S.1929, § 19-407; R.S.1943, § 19-409; Laws 1969, c. 112, § 4, p. 522; Laws 1979, LB 80, § 41; Laws 1989, LB 327, § 3; Laws 1994, LB 76, § 512; Laws 1999, LB 250, § 2; Laws 2019, LB193, § 16.
Effective date September 1, 2019.

19-411 City council members; bonds; vacancies, how filled.

The city council members in a city under the commission plan of government shall qualify and give bond in the manner and amount provided by the existing laws governing the city in which they are elected. If any vacancy occurs in the office of city council member, the vacancy shall be filled as provided in section 32-568. The terms of office of all other elective or appointive officers in force within or for any such city shall cease as soon as the city council selects or appoints their successors and such successors qualify and give bond as by law provided or as soon as such city council by resolution declares the terms of any such elective or appointive officers at an end or abolishes or discontinues any of such offices.

Source: Laws 1911, c. 24, § 9, p. 156; Laws 1913, c. 21, § 5, p. 89; R.S.1913, § 5296; C.S.1922, § 4519; C.S.1929, § 19-409; R.S. 1943, § 19-411; Laws 1969, c. 257, § 17, p. 941; Laws 1979, LB

80, § 43; Laws 1990, LB 853, § 3; Laws 1994, LB 76, § 513; Laws 2019, LB193, § 17.
Effective date September 1, 2019.

19-412 Officers; employees; compensation.

(1) The officers and employees of a city under the commission plan of government shall receive such compensation as the mayor and city council shall fix by ordinance.

(2) The salary of any elective officer in a city under the commission plan of government shall not be increased or diminished during the term for which he or she was elected, except that when there are officers elected to a city council, board, or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to be elected or appointed to such office during the time for which he or she was elected when, during the same time, the salary has been increased.

(3) The salary or compensation of all other officers or employees of a city under the commission plan of government shall be determined when they are appointed or elected by the city council, board, or commission and shall be payable at such times or for such periods as the city council, board, or commission shall determine.

Source: Laws 1911, c. 24, § 10, p. 157; Laws 1913, c. 21, § 6, p. 90; R.S.1913, § 5297; Laws 1915, c. 97, § 1, p. 239; C.S.1922, § 4520; Laws 1923, c. 141, § 6, p. 349; C.S.1929, § 19-410; Laws 1943, c. 37, § 1, p. 179; R.S.1943, § 19-412; Laws 1951, c. 21, § 1, p. 105; Laws 1979, LB 80, § 44; Laws 1992, LB 950, § 1; Laws 2019, LB193, § 18.
Effective date September 1, 2019.

19-413 City council; powers.

The city council in a city under the commission plan of government shall have, possess, and exercise, by itself or through such methods as it may provide, all executive or legislative or judicial powers and duties previously held, possessed, or exercised under the then existing laws governing such city, by the mayor, mayor and city council, water commissioners, water board, water and light commissioner, board of fire and police commissioners, park commissioners, or park board. The powers, duties, and office of all such boards and the members thereof shall cease and terminate, and the powers and duties and officers of all other boards created by statute for the government of any such city shall also cease and terminate. Nothing contained in this section shall be so construed as to interfere with the powers, duties, authority, and privileges that have been, are, or may be hereafter conferred and imposed upon the water board in cities of the metropolitan class as prescribed by law nor of any office or officer named in the Constitution of Nebraska exercising office, powers, or functions within any such city. Such city council, upon taking office, shall have and may exercise all executive or legislative or judicial powers possessed or

exercised by any other officer or board provided by law for or within any such city, except officers named in the Constitution of Nebraska.

Source: Laws 1911, c. 24, § 11, p. 158; Laws 1913, c. 21, § 7, p. 91; R.S.1913, § 5298; C.S.1922, § 4521; Laws 1923, c. 141, § 7, p. 350; C.S.1929, § 19-411; R.S.1943, § 19-413; Laws 2019, LB193, § 19.

Effective date September 1, 2019.

19-415 Mayor; city council members; powers and duties; heads of departments.

In cities of the metropolitan class under the commission plan of government, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one city council member to be superintendent of the department of accounts and finances, one city council member to be superintendent of the department of police, sanitation, and public safety, one city council member to be superintendent of the department of fire protection and water supply, one city council member to be superintendent of the department of street cleaning and maintenance, one city council member to be superintendent of the department of public improvements, and one city council member to be superintendent of parks and public property.

In cities under the commission plan of government containing at least forty thousand and less than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be superintendent of the department of public affairs, one city council member to be superintendent of the department of accounts and finances, one city council member to be superintendent of the department of public safety, one city council member to be superintendent of the department of streets and public improvements, and one city council member to be superintendent of the department of parks and public property.

In cities under the commission plan of government containing at least two thousand and less than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council shall consist of the mayor who shall be commissioner of the department of public affairs and public safety, one city council member to be commissioner of the department of streets, public improvements, and public property, one city council member to be commissioner of the department of public accounts and finances, one city council member to be commissioner of the department of public works, and one city council member to be commissioner of the department of parks and recreation.

In all of such cities, the commissioner of the department of accounts and finances shall be vice president of the city council and shall, in the absence or inability of the mayor to serve, perform the duties of the mayor. In case of vacancy in the office of mayor by death or otherwise, the vacancy shall be filled as provided in section 32-568.

Source: Laws 1911, c. 24, § 12, p. 160; R.S.1913, § 5299; C.S.1922, § 4522; Laws 1923, c. 141, § 8, p. 352; C.S.1929, § 19-412; R.S.1943, § 19-415; Laws 1963, c. 89, § 1, p. 299; Laws 1969, c. 112, § 6, p. 523; Laws 1979, LB 80, § 45; Laws 1979, LB 281,

§ 4; Laws 1994, LB 76, § 514; Laws 2017, LB113, § 25; Laws 2019, LB193, § 20.

Effective date September 1, 2019.

19-416 Officers; employees; appointment; compensation; removal.

The city council in a city under the commission plan of government shall, at its first meeting or as soon as possible thereafter, elect as many of the city officers provided for by the laws or ordinances governing such city as may, in the judgment of the city council, be essential and necessary to the economical but efficient and proper conduct of the government of the city and shall at the same time fix the salaries of the officers so elected either by providing that such salaries shall remain the same as previously fixed by the laws or ordinances for such officers or may then raise or lower the existing salaries of any such officers. The city council may modify the powers or duties of any such officers, as provided by the laws or ordinances, or may completely define and fix such powers or duties, anew. Any such officers or any assistant or employee elected or appointed by the city council may be removed by the city council at any time, except that in cities of the metropolitan class no member or officer of the fire department shall be discharged for political reasons, nor shall any person be employed in such department for political reasons. Before any such officer or employee can be discharged, charges must be filed against him or her before the city council and a hearing had thereon, and an opportunity given such officer or employee to defend against such charges. This section shall not be construed to prevent peremptory suspension of such officer or employee by the city council in case of misconduct, neglect of duty, or disobedience of orders. Whenever any such suspension is made, charges shall be at once filed by the city council with the officer having charge of the records of the city council and a trial had thereon at the second meeting of the city council after such charges are filed. For the purpose of hearing such charges the city council shall have power to enforce attendance of witnesses and the production of books and papers and to administer oaths to witnesses in the same manner and with like effect and under the same penalty, as in the case of magistrates exercising civil and criminal jurisdiction under the statutes of the State of Nebraska.

Source: Laws 1911, c. 24, § 13, p. 161; R.S.1913, § 5300; Laws 1919, Spec. Sess., c. 2, § 6, p. 49; C.S.1922, § 4523; C.S.1929, § 19-413; R.S.1943, § 19-416; Laws 2019, LB193, § 21.

Effective date September 1, 2019.

19-417 Offices and boards; creation; discontinuance.

The city council in a city under the commission plan of government shall have power to discontinue any employment or abolish any office at any time, when, in the judgment of the city council, such employment or office is no longer necessary. The city council shall have power, at any time and at any meeting, to create any office or board it deems necessary, including the office of city manager, and fix salaries. The city council may create a board of three or more members composed of other officers of the city and confer upon such board any power not required to be exercised by the city council itself. The city council may require such officers to serve upon any such board and perform

the services required of it with or without any additional pay for such additional service.

Source: Laws 1911, c. 24, § 14, p. 162; R.S.1913, § 5301; Laws 1919, c. 35, § 1, p. 116; C.S.1922, § 4524; C.S.1929, § 19-414; R.S.1943, § 19-417; Laws 2019, LB193, § 22.
Effective date September 1, 2019.

19-418 City council; meetings; quorum.

In cities under the commission plan of government, the regular meetings of the city council in cities of the metropolitan class shall be held at least once in each week and upon such day and hour as the city council may designate. In all other cities under the commission plan of government having a population of two thousand or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the regular meetings of the city council shall be held at such intervals and upon such day and hour as the city council may by ordinance or resolution designate. Special meetings of the city council in any of such cities may be called, from time to time, by the mayor or two city council members, giving notice in such manner as may be fixed or defined by law or ordinance in any of such cities or as shall be fixed by ordinance or resolution by such city council. A majority of such city council shall constitute a quorum for the transaction of any business, but it shall require a majority vote of the city council in any such city to pass any measure or transact any business.

Source: Laws 1911, c. 24, § 15, p. 163; R.S.1913, § 5302; C.S.1922, § 4525; C.S.1929, § 19-415; R.S.1943, § 19-418; Laws 1969, c. 257, § 18, p. 941; Laws 1979, LB 80, § 46; Laws 2017, LB113, § 26; Laws 2019, LB193, § 23.
Effective date September 1, 2019.

19-419 Mayor; city council members; office; duties.

The mayor and city council members in a city under the commission plan of government shall maintain offices at the city hall, and the mayor shall regularly investigate all public affairs concerning the interest of the city and investigate and ascertain the efficiency and manner in which all departments of the city government are being conducted. The mayor shall recommend to the city council all such matters as in his or her judgment should receive the investigation, consideration, or action of the city council.

Source: Laws 1911, c. 24, § 16, p. 163; R.S.1913, § 5303; C.S.1922, § 4526; C.S.1929, § 19-416; R.S.1943, § 19-419; Laws 1979, LB 80, § 47; Laws 2019, LB193, § 24.
Effective date September 1, 2019.

19-421 Petitions; requirements; verification; costs.

All petitions provided for in the Municipal Commission Plan of Government Act shall be subject to and meet the requirements of sections 32-628 to 32-630. Upon the filing of a petition, a city, upon passage of a resolution by the city council, and the county clerk or election commissioner of the county in which such city is located may by mutual agreement provide that the county clerk or election commissioner shall ascertain whether the petition is signed by the

requisite number of legal voters. The city shall reimburse the county for any costs incurred by the county clerk or election commissioner.

Source: Laws 1911, c. 24, § 18, p. 164; R.S.1913, § 5305; C.S.1922, § 4528; C.S.1929, § 19-418; R.S.1943, § 19-421; Laws 1983, LB 281, § 1; Laws 1994, LB 76, § 515; Laws 2019, LB193, § 25.
Effective date September 1, 2019.

19-422 Cities adopting the commission plan; laws applicable.

All general state laws governing cities described in section 19-401 shall, according to the classification of such city, apply to and govern any city under the commission plan of government so far as such laws are applicable and not inconsistent with the provisions, intents, and purposes of the Municipal Commission Plan of Government Act.

Source: Laws 1911, c. 24, § 19, p. 164; R.S.1913, § 5306; C.S.1922, § 4529; C.S.1929, § 19-419; R.S.1943, § 19-422; Laws 2019, LB193, § 26.
Effective date September 1, 2019.

19-423 Appropriations and expenses; alteration; power of first city council.

If at the beginning of the term of office of the first city council elected under sections 19-401 to 19-409 the appropriations or distribution of the expenditures of the city government for the current fiscal year have been made, the city council shall have power, by ordinance, to revise, repeal, or change such distribution or to make additional appropriation, within the limit of the total taxes levied for such year.

Source: Laws 1911, c. 24, § 20, p. 164; R.S.1913, § 5307; C.S.1922, § 4530; C.S.1929, § 19-420; R.S.1943, § 19-423; Laws 1994, LB 76, § 516; Laws 2019, LB193, § 27.
Effective date September 1, 2019.

19-432 Commission plan; discontinuance; petition; election.

Any city which shall have operated for more than four years under the commission plan of government may abandon organization thereunder, and accept the provisions of the general law of the state then applicable to cities of its population, by proceeding as follows: Upon a petition, signed by such number of the qualified electors of such city as equals at least twenty-five percent of the highest vote cast for any of the city council members elected at the last preceding general or regular election in such city, being filed with and found sufficient by the city clerk, a special election shall be called in such city, at which special election the following proposition only shall be submitted: Shall the city of (name of city) abandon its organization under the commission plan of government and become a city under the general laws of the state governing cities of like population? If a majority of the votes cast at any such special election are in favor of such proposition, the officers elected at the next succeeding general city election in such city shall be those then prescribed by the general laws of the state for cities of like population, and upon the qualification of such officers, according to the terms of such general state law, such city shall become a city governed by and under such general state law. If such special election is not held and the result thereof declared at least sixty days before the election date in such city, then such city shall continue to be

governed under the commission plan of government until the second general city election occurring after the date of such special election, and at such general city election the officers provided by such general state law for the government of such city shall be elected, and, upon their qualification, the terms of office of the city council members elected under the commission plan of government shall cease and terminate.

Source: Laws 1911, c. 24, § 24, p. 169; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-432; Laws 1969, c. 257, § 19, p. 942; Laws 1979, LB 80, § 52; Laws 2019, LB193, § 28.
Effective date September 1, 2019.

19-433 Commission plan; discontinuance; petition; election; procedure.

(1) Within ten days after the date of filing the petition asking for a special election on the issue of discontinuing the commission plan of government, the city clerk shall examine it and, with the assistance of the election commissioner or county clerk, ascertain whether the petition is signed by the requisite number of registered voters. If necessary, the city council shall allow the city clerk extra help for the purpose of examining the petition. No new signatures may be added after the initial filing of the petition. If the petition contains the requisite number of signatures, the city clerk shall promptly submit the petition to the city council.

(2) Upon receipt of the petition, the city council shall promptly order and fix a date for holding the special election, which date shall not be less than thirty nor more than sixty days from the date of the city clerk's certificate to the city council showing the petition sufficient. The special election shall be conducted in the same manner as provided for the election of city council members under the Municipal Commission Plan of Government Act.

Source: Laws 1911, c. 24, § 24, p. 170; Laws 1913, c. 21, § 8, p. 93; R.S.1913, § 5311; C.S.1922, § 4534; C.S.1929, § 19-424; R.S. 1943, § 19-433; Laws 1979, LB 80, § 53; Laws 1984, LB 975, § 11; Laws 1994, LB 76, § 517; Laws 2019, LB193, § 29.
Effective date September 1, 2019.

ARTICLE 5

CHARTER CONVENTION

(Applicable to cities over 5,000 population.)

Section

19-502. Charter convention; work, when deemed complete; charter, when published.

19-503. Charter amendments; petition; adoption.

19-502 Charter convention; work, when deemed complete; charter, when published.

The city clerk shall not begin the publication of any proposed charter or amendments, as required by the Constitution of Nebraska, in less than thirty days from the time of the completion of the work of the charter convention, and the work of the charter convention shall be deemed completed whenever its certified copy of charter or amendments shall be delivered to the city clerk,

together with twenty-five correct copies thereof. Such copies shall when filed be open to the inspection of any elector of such city.

Source: Laws 1913, c. 192, § 2, p. 570; R.S.1913, § 5313; C.S.1922, § 4536; C.S.1929, § 19-502; R.S.1943, § 19-502; Laws 2019, LB193, § 30.
Effective date September 1, 2019.

19-503 Charter amendments; petition; adoption.

Whenever any petition, as provided in section 19-501, shall be filed with the city clerk and shall contain the required number of signatures of qualified electors, asking for the submission of additional or alternative articles or sections in the complete form in which such articles or sections are to read as amended, such articles or sections shall be deemed to be proposed for adoption by the qualified electors of the city with the same force and effect as if proposed by the charter convention, and the article or section which receives the majority of all the votes cast for and against such additional or alternative articles or sections shall be declared adopted, and certified to the Secretary of State, a copy deposited in the archives of the city, and shall become the charter or part thereof, of such city.

Source: Laws 1913, c. 192, § 3, p. 570; R.S.1913, § 5314; C.S.1922, § 4537; C.S.1929, § 19-503; R.S.1943, § 19-503; Laws 2019, LB193, § 31.
Effective date September 1, 2019.

ARTICLE 6

CITY MANAGER PLAN

(Applicable to cities of 1,000 population or more and less than 200,000.)

(a) GENERAL PROVISIONS

Section

- 19-601. Act, how cited.
- 19-602. City, defined; population; how determined.
- 19-603. Charter and general laws; force and effect.
- 19-604. Ordinances; resolutions; orders; regulations; force and effect.

(b) ADOPTION AND ABANDONMENT OF PLAN

- 19-605. City manager plan; petition for adoption; election.
- 19-606. City manager plan; adoption or abandonment; election.
- 19-607. Election; ballot; form.
- 19-608. Election; adoption of plan; when effective; rejection; resubmission.
- 19-609. City manager plan; abandonment; petition; election.
- 19-610. Local charters; right to adopt.

(c) CITY COUNCIL

- 19-611. City council; powers.
- 19-612. City council members; nomination and election; terms.
- 19-613. City council members; qualifications; forfeiture of office; grounds.
- 19-613.01. City council members; elected from a ward; election; ballots.
- 19-615. City council; meetings; quorum.
- 19-616. Appointive or elected official; compensation; no change during term of office.
- 19-617. City council; organization, when; president; powers.
- 19-618. City council; city manager; appointment; investigatory powers of city council.
- 19-619. Appropriations and expenses; revision; power of first city council.
- 19-620. City council; departments and offices; control.

Section

(g) CITY MANAGER

- 19-645. City manager; how chosen; qualifications; salary.
 19-646. City manager; powers; duties.
 19-647. City manager; investigatory powers.
 19-648. City manager; bond; premium; payment.

(i) PETITION FOR ABANDONMENT

- 19-662. City manager plan; abandoning; petition; filing; election.

(a) GENERAL PROVISIONS

19-601 Act, how cited.

Sections 19-601 to 19-662 shall be known and may be cited as the City Manager Plan of Government Act.

Source: Laws 1917, c. 208, § 1, p. 497; C.S.1922, § 4538; C.S.1929, § 19-601; R.S.1943, § 19-601; Laws 1955, c. 55, § 4, p. 180; Laws 1963, c. 89, § 2, p. 300; Laws 1985, LB 372, § 1; Laws 1998, LB 893, § 1; Laws 2019, LB193, § 32.
 Effective date September 1, 2019.

19-602 City, defined; population; how determined.

For purposes of the City Manager Plan of Government Act, city means any city having a population of one thousand or more and less than two hundred thousand inhabitants. The population of a city shall be the number of inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

Source: Laws 1917, c. 208, § 2, p. 498; C.S.1922, § 4539; C.S.1929, § 19-602; R.S.1943, § 19-602; Laws 2017, LB113, § 28; Laws 2019, LB193, § 33.
 Effective date September 1, 2019.

19-603 Charter and general laws; force and effect.

In any city which adopts the city manager plan of government as provided in the City Manager Plan of Government Act, the charter and all general laws governing such city shall continue in full force and effect, except that if any provisions of such charter or laws are inconsistent with the act, the same shall be superseded.

Source: Laws 1917, c. 208, § 3, p. 498; C.S.1922, § 4540; C.S.1929, § 19-603; R.S.1943, § 19-603; Laws 2019, LB193, § 34.
 Effective date September 1, 2019.

19-604 Ordinances; resolutions; orders; regulations; force and effect.

All valid ordinances, resolutions, orders, or other regulations of a city which adopts the city manager plan of government, or any authorized body or official of such city, existing at the time the city manager plan becomes applicable in the city, and not inconsistent with the City Manager Plan of Government Act, shall continue in full force and effect until amended, repealed, or otherwise superseded.

Source: Laws 1917, c. 208, § 4, p. 498; C.S.1922, § 4541; C.S.1929, § 19-604; R.S.1943, § 19-604; Laws 2019, LB193, § 35.
 Effective date September 1, 2019.

(b) ADOPTION AND ABANDONMENT OF PLAN

19-605 City manager plan; petition for adoption; election.

Whenever the electors of any city, equal in number to twenty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of organizing the city under the city manager plan of government be submitted to the electors of such city, the city clerk shall within one week certify that fact to the city council, and the city council shall, within thirty days, adopt a resolution to provide for submitting such question at a special election to be held not less than thirty days after the adoption of the resolution except as provided in this section. Any such election shall be conducted in accordance with the Election Act except as otherwise provided in the City Manager Plan of Government Act. If such petition is filed not more than one hundred eighty days nor less than seventy days prior to the regular municipal statewide primary or statewide general election, the city council shall adopt a resolution to provide for submitting such question at the next such election.

Source: Laws 1917, c. 208, § 6, p. 498; C.S.1922, § 4543; C.S.1929, § 19-606; R.S.1943, § 19-605; Laws 1974, LB 897, § 2; Laws 2019, LB193, § 36.

Effective date September 1, 2019.

Cross References

Election Act, see section 32-101.

19-606 City manager plan; adoption or abandonment; election.

The proposition to adopt or to abandon the city manager plan of government shall not be submitted to the electors of any city later than sixty days before a regular municipal election. If, in any city, a sufficient petition is filed requiring that the question of adopting the commission plan of government, or the question of choosing a convention to frame a city charter, be submitted to the electors of such city, or if an ordinance providing for the election of a charter convention is passed by the city council, the proposition to adopt the city manager plan of government shall not be submitted in such city so long as the question of adopting the commission plan of government, or of choosing a charter convention, or adopting a charter framed by such convention, is pending.

Source: Laws 1917, c. 208, § 7, p. 498; C.S.1922, § 4544; C.S.1929, § 19-607; R.S.1943, § 19-606; Laws 2019, LB193, § 37.

Effective date September 1, 2019.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-607 Election; ballot; form.

In submitting the question of adopting the city manager plan of government, the city council shall cause to be printed on the ballots the following question: Shall the city manager plan of government as provided in the City Manager Plan of Government Act be adopted? Immediately following such question there shall be printed on the ballots the following propositions in the order here set forth: For the adoption of the city manager plan of government and Against the adoption of the city manager plan of government. Immediately to the left of

each proposition shall be placed an oval or a square in which the electors may vote by making a cross (X) or other clear, intelligible mark.

Source: Laws 1917, c. 208, § 8, p. 499; C.S.1922, § 4545; C.S.1929, § 19-608; R.S.1943, § 19-607; Laws 2019, LB193, § 38.
Effective date September 1, 2019.

19-608 Election; adoption of plan; when effective; rejection; resubmission.

If the city manager plan of government is approved by a majority of the electors voting thereon, such plan shall go into effect immediately as it applies to the nomination and election of officers provided for in sections 19-612 to 19-613.01, and in all other respects such plan shall go into effect on the first Monday following the next regular municipal election. If the proposition to adopt the city manager plan of government is rejected by the electors, it shall not again be submitted in such city within two years after the proposition is rejected.

Source: Laws 1917, c. 208, § 9, p. 499; C.S.1922, § 4546; C.S.1929, § 19-609; R.S.1943, § 19-608; Laws 2019, LB193, § 39.
Effective date September 1, 2019.

19-609 City manager plan; abandonment; petition; election.

Any city which has operated under the city manager plan of government for at least four years may abandon such organization and either accept the provisions of the general law applicable to such city or adopt any other optional plan or organization open to such city. The petition for abandonment shall designate the plan desired, and the following proposition shall be submitted: Shall the city of (.....) abandon the city manager plan of government and adopt the (name of plan) as provided in (giving the legal designation of the law as published)? If a majority of the votes cast thereon be in favor of such proposition, the officers elected at the next regular municipal election shall be those prescribed by the laws designated in the petition, and upon the qualification of such officers the city shall become organized under such law. Such change shall not affect the property right or ability of any nature of such city, but shall extend merely to its form of government.

Source: Laws 1917, c. 208, § 10, p. 499; C.S.1922, § 4547; C.S.1929, § 19-610; R.S.1943, § 19-609; Laws 2019, LB193, § 40.
Effective date September 1, 2019.

Cross References

Petition for abandonment of city manager plan of government, see section 19-662.

19-610 Local charters; right to adopt.

Nothing in the City Manager Plan of Government Act shall be construed to interfere with or prevent any city at any time from framing and adopting a charter for its own government as provided by the Constitution of Nebraska. In exercising the right to frame its own charter, it shall not be obligatory upon any city to adopt or retain the city manager plan of government.

Source: Laws 1917, c. 208, § 11, p. 500; C.S.1922, § 4548; C.S.1929, § 19-611; R.S.1943, § 19-610; Laws 2019, LB193, § 41.
Effective date September 1, 2019.

(c) CITY COUNCIL

19-611 City council; powers.

The governing body of a city which has adopted the city manager plan of government shall be the city council, which shall exercise all the powers which have been or may be conferred upon the city by the Constitution of Nebraska and laws of the state, except as otherwise provided in the City Manager Plan of Government Act.

Source: Laws 1917, c. 208, § 12, p. 500; C.S.1922, § 4549; C.S.1929, § 19-612; R.S.1943, § 19-611; Laws 2019, LB193, § 42.
Effective date September 1, 2019.

19-612 City council members; nomination and election; terms.

City council members in a city under the city manager plan of government shall be nominated and elected as provided in section 32-538. The terms of office of all such members shall commence on the first regular meeting of such city council in December following their election.

Source: Laws 1917, c. 208, § 13, p. 500; C.S.1922, § 4550; C.S.1929, § 19-613; R.S.1943, § 19-612; Laws 1963, c. 90, § 1, p. 311; Laws 1967, c. 90, § 1, p. 279; Laws 1969, c. 257, § 21, p. 943; Laws 1972, LB 661, § 6; Laws 1975, LB 323, § 3; Laws 1977, LB 201, § 6; Laws 1979, LB 80, § 54; Laws 1994, LB 76, § 518; Laws 2019, LB193, § 43.
Effective date September 1, 2019.

19-613 City council members; qualifications; forfeiture of office; grounds.

Members of the city council in a city under the city manager plan of government shall be residents and registered voters of the city and shall hold no other employment with the city. Any city council member who ceases to possess any of the qualifications required by this section or who has been convicted of a felony or of any public offense involving the violation of the oath of office of such member while in office shall forthwith forfeit such office.

Source: Laws 1917, c. 208, § 14, p. 500; C.S.1922, § 4551; C.S.1929, § 19-614; R.S.1943, § 19-613; Laws 1971, LB 494, § 6; Laws 1975, LB 453, § 2; Laws 1977, LB 50, § 1; Laws 1979, LB 80, § 55; Laws 1983, LB 370, § 9; Laws 1990, LB 931, § 4; Laws 1991, LB 12, § 3; Laws 1994, LB 76, § 519; Laws 2012, LB786, § 1; Laws 2019, LB193, § 44.
Effective date September 1, 2019.

Cross References

Vacancies, see sections 32-568 and 32-569.

19-613.01 City council members; elected from a ward; election; ballots.

Any city council member in a city under the city manager plan of government to be elected from a ward, or an appointed successor in the event of a vacancy, shall be a resident and a registered voter of such ward. The city council member shall be nominated and elected in the same manner as provided for at-large candidates, except that only residents and registered voters of the ward may participate in the signing of nomination petitions. All nominating petitions

and ballots shall clearly identify the ward from which such person shall be a candidate. The ballots within a ward shall not contain the names of ward candidates from other wards.

Source: Laws 1967, c. 90, § 2, p. 280; Laws 1972, LB 661, § 7; Laws 1975, LB 323, § 4; Laws 1979, LB 80, § 56; Laws 1984, LB 975, § 12; Laws 1994, LB 76, § 520; Laws 2019, LB193, § 45.
Effective date September 1, 2019.

19-615 City council; meetings; quorum.

At the first regular meeting in December following the general election in every even-numbered year, the city council in a city under the city manager plan of government shall meet in the usual place for holding meetings and the newly elected city council members shall assume the duties of their office. Thereafter the city council shall meet at such time and place as it may prescribe by ordinance, but not less frequently than twice each month in cities of the first class. The mayor, any two city council members, or the city manager may call special meetings of the city council upon at least six hours' written notice. The meetings of the city council and sessions of committees of the city council shall be public. A majority of the city council members shall constitute a quorum, but a majority vote of all the city council members elected shall be required to pass any measure or elect to any office.

Source: Laws 1917, c. 208, § 16, p. 501; C.S.1922, § 4553; C.S.1929, § 19-616; R.S.1943, § 19-615; Laws 1972, LB 661, § 8; Laws 1974, LB 609, § 1; Laws 1977, LB 203, § 1; Laws 1979, LB 80, § 57; Laws 2001, LB 484, § 3; Laws 2019, LB193, § 46.
Effective date September 1, 2019.

19-616 Appointive or elected official; compensation; no change during term of office.

The annual compensation of the mayor and city council members in cities under the city manager plan of government shall be payable quarterly in equal installments and shall be fixed by the city council. The salary of any appointive or elective officer shall not be increased or diminished during the term for which such officer was elected or appointed, except that when there are officers elected or appointed to the city council or a board or commission having more than one member and the terms of one or more members commence and end at different times, the compensation of all members of such city council, board, or commission may be increased or diminished at the beginning of the full term of any member thereof. No person who has resigned or vacated any office shall be eligible to be elected or appointed to such office during the time for which he or she was elected or appointed when, during the same time, the salary has been increased. For each absence from regular meetings of the city council, unless authorized by a two-thirds vote of all members of the city council, there shall be deducted a sum equal to two percent of such annual salary.

Source: Laws 1917, c. 208, § 17, p. 501; C.S.1922, § 4554; C.S.1929, § 19-617; R.S.1943, § 19-616; Laws 1969, c. 113, § 1, p. 515; Laws 1979, LB 80, § 58; Laws 2002, LB 1054, § 2; Laws 2019, LB193, § 47.
Effective date September 1, 2019.

Cross References

Vacancies, how filled, see sections 19-3101 and 32-560 to 32-574.

19-617 City council; organization, when; president; powers.

At the first regular meeting in December following the general election in every even-numbered year, the city council in a city under the city manager plan of government shall elect one of its members as president, who shall be ex officio mayor, and another as vice president, who shall serve in the absence of the president. In the absence of the president and the vice president, the city council may elect a temporary chairperson. The president shall preside over the city council and have a voice and vote in its proceedings but no veto. The president shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In addition, the president shall exercise such other powers and perform such duties, not inconsistent with the City Manager Plan of Government Act, as are conferred upon the mayor of the city.

Source: Laws 1917, c. 208, § 18, p. 502; C.S.1922, § 4555; C.S.1929, § 19-618; R.S.1943, § 19-617; Laws 1972, LB 661, § 9; Laws 1977, LB 203, § 2; Laws 1978, LB 591, § 1; Laws 2001, LB 484, § 4; Laws 2019, LB193, § 48.
Effective date September 1, 2019.

19-618 City council; city manager; appointment; investigatory powers of city council.

The city council in a city under the city manager plan of government shall choose a city manager, a city clerk, and, where required, a civil service commission, but no member of the city council shall be chosen as manager or as a member of the civil service commission. Neither the city council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager or in any manner seek to prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the city council and its members shall deal with the administrative service solely through the city manager, and neither the city council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. The city council, or a committee thereof, may investigate the affairs of any department or the official acts and conduct of any city officer. The city council shall have power to administer oaths and compel the attendance of witnesses and the production of books and papers and may punish for contempt any person failing to obey its subpoena or refusing to testify. No person shall be excused from testifying, but his or her testimony shall not be used against him or her in any criminal proceeding other than for perjury.

Source: Laws 1917, c. 208, § 19, p. 502; C.S.1922, § 4556; C.S.1929, § 19-619; R.S.1943, § 19-618; Laws 1985, LB 372, § 2; Laws 2019, LB193, § 49.
Effective date September 1, 2019.

19-619 Appropriations and expenses; revision; power of first city council.

If, at the beginning of the term of office of the first city council elected under the city manager plan of government, the appropriations or distribution of the

expenditures of the city government for the current fiscal year have been made, the city council shall have power, by ordinance, to repeal or revise such distribution, or to make additional appropriations within the limit of the total taxes levied for the year.

Source: Laws 1917, c. 208, § 20, p. 503; C.S.1922, § 4557; C.S.1929, § 19-620; R.S.1943, § 19-619; Laws 2019, LB193, § 50.
Effective date September 1, 2019.

19-620 City council; departments and offices; control.

The city council in a city under the city manager plan of government shall have authority, subject to the City Manager Plan of Government Act, to create and discontinue departments, offices, and employments, and by ordinance or resolution to prescribe, limit, or change the compensation of such officers and employees. Nothing in this section shall be construed as to interfere with or to affect the office or powers of any officer named in the Constitution of Nebraska.

Source: Laws 1917, c. 208, § 21, p. 503; C.S.1922, § 4558; C.S.1929, § 19-621; R.S.1943, § 19-620; Laws 2019, LB193, § 51.
Effective date September 1, 2019.

(g) CITY MANAGER

19-645 City manager; how chosen; qualifications; salary.

The chief executive officer of a city under the city manager plan of government shall be a city manager, who shall be responsible for the proper administration of all affairs of the city. He or she shall be chosen by the city council for an indefinite period, solely on the basis of administrative qualifications, and need not be a resident of the city or state when appointed. He or she shall hold office at the pleasure of the city council and receive such salary as the city council shall fix by ordinance. During the absence or disability of the city manager, the city council shall designate some properly qualified person to perform the duties of the city manager.

Source: Laws 1917, c. 208, § 46, p. 510; C.S.1922, § 4583; C.S.1929, § 19-646; R.S.1943, § 19-645; Laws 2019, LB193, § 52.
Effective date September 1, 2019.

19-646 City manager; powers; duties.

The powers and duties of the city manager shall be (1) to see that the laws and ordinances of the city are enforced, (2) to appoint and remove all heads of city departments and all subordinate officers and employees in such departments in both the classified and unclassified service, which appointments shall be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the civil service provisions of the Civil Service Act, (3) to exercise control over all city departments and divisions thereof that may be created by the city council, (4) to attend all meetings of the city council with the right to take part in the discussion but not to vote, (5) to recommend to the city council for adoption such measures as he or she may deem necessary or expedient, (6) to prepare the annual city budget and keep the city council fully advised as to the financial condition and needs of the city, and (7) to perform such other duties as may be required of him or her by the City

Manager Plan of Government Act or by ordinance or resolution of the city council.

Source: Laws 1917, c. 208, § 47, p. 511; C.S.1922, § 4584; C.S.1929, § 19-647; R.S.1943, § 19-646; Laws 1985, LB 372, § 3; Laws 2019, LB193, § 53.

Effective date September 1, 2019.

Cross References

Civil Service Act, see section 19-1825.

19-647 City manager; investigatory powers.

The city manager may investigate at any time the affairs of any city department or the conduct of any officer or employee of the city. The city manager, or any person or persons appointed by him or her for such purpose, shall have the same power to compel the attendance of witnesses and the production of books and papers and other evidence, and to punish for contempt, granted to the city council pursuant to section 19-618.

Source: Laws 1917, c. 208, § 48, p. 511; C.S.1922, § 4585; C.S.1929, § 19-648; R.S.1943, § 19-647; Laws 2019, LB193, § 54.

Effective date September 1, 2019.

19-648 City manager; bond; premium; payment.

Before taking office the city manager shall file with the city clerk a surety company bond, conditioned upon the honest and faithful performance of his or her duties, in such sum as shall be fixed by the city council. The premium of such bond shall be paid by the city.

Source: Laws 1917, c. 208, § 49, p. 511; C.S.1922, § 4586; C.S.1929, § 19-649; R.S.1943, § 19-648; Laws 2019, LB193, § 55.

Effective date September 1, 2019.

(i) PETITION FOR ABANDONMENT

19-662 City manager plan; abandoning; petition; filing; election.

Whenever electors of any city under the city manager plan of government, equal in number to thirty percent of those who voted at the last regular city election, shall file a petition with the city clerk, asking that the question of abandoning the city manager plan of government be submitted to the electors thereof, the city clerk shall within one week certify that fact to the city council, and the city council shall, within thirty days, adopt a resolution to provide for submitting such question at the next regular municipal election after adoption of the resolution. When such a petition is filed with the city clerk within a seventy-day period prior to a regular municipal election, the resolution adopted by the city council shall provide for the submission of such question at the second regular municipal election thereafter as provided by law.

Source: Laws 1974, LB 897, § 3; Laws 2019, LB193, § 56.

Effective date September 1, 2019.

ARTICLE 7
EMINENT DOMAIN

Section

- 19-701. Public utility; condemnation; election; resubmission.
- 19-702. Court of condemnation; members; hearing; parties; notice.
- 19-703. Court of condemnation; powers and duties; vacancy, how filled.
- 19-704. Court of condemnation; award; appeal; procedure; effect of appeal.
- 19-705. Court of condemnation; appeal; judgment; bonds.
- 19-706. Court of condemnation; members; compensation; costs; witness fees.
- 19-707. Powers; conferred on certain cities.
- 19-708. Public utility; acquisition by city or village of distribution system; wholesale service.
- 19-709. Property; acquisition for public use; limitation; purposes enumerated; procedure.
- 19-710. City council action; rights of adjoining property owner.

19-701 Public utility; condemnation; election; resubmission.

Whenever the qualified electors of any city of the primary class, city of the first class, city of the second class, or village shall vote at any general or special election to acquire and appropriate, by an exercise of the power of eminent domain, any waterworks, waterworks system, electric light plant, electric light and power plant, heating plant, street railway, or street railway system, located or operating within or partly within and partly without such city or village, together with real and personal property needed or useful in connection therewith, if the main part of such works, plant, or system be within such city or village and even though a franchise for the construction and operating of any such works, plant, or system may or may not have expired, then such city or village shall possess and have the power and authority, by an exercise of the power of eminent domain to appropriate and acquire, for the public use of such city or village, any such works, plant, railway, pipelines, or system. If any public utility properties supplying different kinds of service to such city or village are operated as one unit and under one management, the right to acquire and appropriate, as provided in sections 19-701 to 19-707, shall cover and extend to the entire property and not to any divided or segregated part thereof, and the duly constituted authorities of such city or village shall have the power to submit such question or proposition, in the usual manner, to the qualified electors of such city or village at any general city or village election or at any special city or village election and may submit the proposition in connection with any city or village special election called for any other purpose, and the votes cast thereon shall be canvassed and the result found and declared as in any other city or village election. Such city or village authorities shall submit such question at any such election whenever a petition asking for such submission, signed by the legal voters of such city or village equaling in number fifteen percent of the votes cast at the last general city or village election, and filed in the city clerk's or village clerk's office at least sixty days before the election at which the submission is presented, but if the question of acquiring any particular plant or system has been submitted once, the same question shall not again be submitted to the voters of such city or village until two years shall have elapsed from and after the date of the findings by the board of appraisers regarding the value of the property and the city's or village's rejection of such question.

Source: Laws 1919, c. 188, § 1, p. 422; C.S.1922, § 4600; C.S.1929, § 19-701; Laws 1941, c. 26, § 1, p. 122; C.S.Supp.,1941,

§ 19-708; R.S.1943, § 19-701; Laws 1955, c. 56, § 1, p. 183; Laws 2002, LB 384, § 29; Laws 2019, LB193, § 57.
Effective date September 1, 2019.

19-702 Court of condemnation; members; hearing; parties; notice.

If the election at which the question is submitted pursuant to section 19-701 is a special election and sixty percent of the votes cast upon such proposition are in favor thereof, or if the election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor thereof, then the city council or village board of trustees or officer possessing the power and duty to ascertain and declare the result of such election shall certify such result immediately to the Supreme Court. The Supreme Court shall, within thirty days after the receipt of such certificate, appoint three district judges from three of the judicial districts of the state, and such judges shall constitute a court of condemnation for the ascertainment and finding of the value of any such plant, works, or system, and the Supreme Court shall enter an order requiring such judges to attend as a court of condemnation at the county seat in which such city or village is located within such time as may be stated in such order. The district judges shall attend as ordered, and such court of condemnation shall organize and proceed with its duties. The court of condemnation may adjourn from time to time, and it shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city, the village, or the corporation or persons owning any such plant, system, or works may desire to have made a party to such proceedings. If such time of appearance shall occur after any proceedings have begun, they shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, and leaseholders, or any other party or person claiming any interest in or lien upon any such works, plant, or system may be made parties to such condemnation proceedings, and shall be served with notice of such proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court of the state, either by personal service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 1919, c. 188, § 2, p. 423; C.S.1922, § 4601; C.S.1929, § 19-702; Laws 1941, c. 26, § 2, p. 123; C.S.Supp.,1941, § 19-709; R.S.1943, § 19-702; Laws 2019, LB193, § 58.
Effective date September 1, 2019.

19-703 Court of condemnation; powers and duties; vacancy, how filled.

Any court of condemnation appointed pursuant to section 19-702 shall have full power to summon and swear witnesses, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any works, plant, or system to be acquired pursuant to section 19-701. When any part of the public utilities appropriated under sections 19-701 to 19-707 extends beyond the territory within which the city or village exercising the right of

eminent domain has a right to operate such utilities, the court of condemnation, in determining the damages caused by the appropriation thereof, shall take into consideration the fact that such portion of the utility beyond such territory is being detached and not appropriated by the city or village, and the court of condemnation shall award damages by reason of such detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. Such court of condemnation may appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. Such court of condemnation shall have all the powers and perform all the duties of commissioners in the condemnation and ascertainment of the value and in making of an award of all property of any such works, plant, or system. The clerk of the district court, in the county where such city or village is located, shall attend upon such court of condemnation and perform such duties, as the clerk thereof, as such court of condemnation may direct. The sheriff of any such county or any of his or her deputies shall attend upon such court of condemnation and shall have power to serve summons, subpoenas, and all other orders or papers ordered to be served by such court of condemnation. In case of vacancy in such court of condemnation, such vacancy shall be filled by the Supreme Court if the vacancy occurs while the court is in session, and if it occurs while the court is not in session, then by the Chief Justice of the Supreme Court.

Source: Laws 1919, c. 188, § 3, p. 424; C.S.1922, § 4602; C.S.1929, § 19-703; Laws 1941, c. 26, § 3, p. 124; C.S.Supp.,1941, § 19-710; R.S.1943, § 19-703; Laws 2019, LB193, § 59.
Effective date September 1, 2019.

19-704 Court of condemnation; award; appeal; procedure; effect of appeal.

Upon the determination and filing of a finding of the value of any plant, works, or system by a court of condemnation pursuant to sections 19-702 and 19-703, the city or village shall then have the right and power by ordinance duly passed by the city council or village board of trustees to elect to abandon such condemnation proceedings. If such city or village does not elect to abandon such proceedings within ninety days after the finding and filing of value, then the person or corporation owning any such plant, works, or system may appeal from the finding of value and award by the court of condemnation to the district court by filing within twenty days from the expiration of such time given the city or village to exercise its rights of abandonment, with the city clerk of such city or the village clerk of such village, a bond, to be approved by such clerk, conditioned for the payment of all costs which may be made on any such appeal, and by filing in the district court, within ninety days after such bond is filed, a transcript of the proceedings before such court of condemnation including the evidence taken before it certified by the clerk, reporter, and judges of such court. The appeal in the district court shall be tried and determined upon the pleadings, proceedings, and evidence embraced in such transcript. If such appeal is taken the city or village, upon tendering the amount of the value and award made by such court of condemnation, to the party owning any such plant, works, or system, shall, notwithstanding such appeal, have the right and power to take immediate possession of such plant, works, or system, and the city or village authorities, without vote of the people,

shall have the power, if necessary, to issue and sell bonds of the city or village to provide funds to make such tender.

Source: Laws 1919, c. 188, § 4, p. 425; C.S.1922, § 4603; C.S.1929, § 19-704; Laws 1941, c. 26, § 4, p. 125; C.S.Supp.,1941, § 19-711; R.S.1943, § 19-704; Laws 2019, LB193, § 60.
Effective date September 1, 2019.

19-705 Court of condemnation; appeal; judgment; bonds.

Upon the hearing of an appeal in the district court pursuant to section 19-704, judgment shall be pronounced, as in ordinary cases, for the value of such works, plant, or system. The city, village, party, or corporation owning such plant, works, or system may appeal to the Court of Appeals. Upon a final judgment being pronounced as to the value of such plant, works, or system, the city council of such city or village board of trustees of such village shall issue and sell bonds of the city or village to pay the amount of such value and judgment without a vote of the people.

Source: Laws 1919, c. 188, § 5, p. 426; C.S.1922, § 4604; C.S.1929, § 19-705; Laws 1941, c. 26, § 5, p. 125; C.S.Supp.,1941, § 19-712; R.S.1943, § 19-705; Laws 1991, LB 732, § 22; Laws 2019, LB193, § 61.
Effective date September 1, 2019.

19-706 Court of condemnation; members; compensation; costs; witness fees.

The district judges constituting the court of condemnation appointed pursuant to sections 19-702 and 19-703 shall each receive from and be paid by such city or village fifteen dollars per day for their services and their necessary traveling expenses, hotel bills, and all other necessary expenses incurred while in attendance upon the sittings of such court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177, and the city or village shall pay the reporter that may be appointed by such court such an amount as such court of condemnation shall allow him or her. The county sheriff shall serve all summons, subpoenas, or other orders or papers ordered issued or served by such court of condemnation at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account for all such compensation to the county as is required by him or her under the law governing his or her duties as county sheriff. The court of condemnation shall have power to apportion the cost made before it, between the city or village and the corporation or party owning any such plant, works, or system, and the city or village shall provide for and pay all such costs or portion of costs as the court shall order, and shall also make provisions for the necessary funds and expenses to carry on the proceedings of such court of condemnation, from time to time while such proceedings are in progress, but in the event the city or village elects to abandon the condemnation proceedings pursuant to section 19-704, then the city or village shall pay all the costs made before such court of condemnation. If services of expert witnesses are secured then their fees or compensation to be taxed and paid as costs shall be only such amount as the court of condemnation shall fix, notwithstanding any contract between such experts and the party producing them to pay them more, but a contract to pay them more than the court shall allow as costs may be enforced between any such experts and the litigant or party employing them. The costs

made by any such appeal or appeals shall be adjudged against the party defeated in such appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 1919, c. 188, § 6, p. 426; C.S.1922, § 4605; C.S.1929, § 19-706; Laws 1941, c. 26, § 6, p. 126; C.S.Supp.,1941, § 19-713; R.S.1943, § 19-706; Laws 1981, LB 204, § 18; Laws 2019, LB193, § 62.
Effective date September 1, 2019.

19-707 Powers; conferred on certain cities.

The powers vested in cities and villages under sections 19-701 to 19-707 shall be conferred upon cities of the primary class, cities of the first class, cities of the second class, and villages, whether or not such city or village is operating under a home rule charter adopted pursuant to Article XI of the Constitution of Nebraska.

Source: Laws 1919, c. 188, § 7, p. 427; C.S.1922, § 4606; C.S.1929, § 19-707; Laws 1941, c. 26, § 7, p. 127; C.S.Supp.,1941, § 19-714; R.S.1943, § 19-707; Laws 2019, LB193, § 63.
Effective date September 1, 2019.

19-708 Public utility; acquisition by city or village of distribution system; wholesale service.

Whenever the local distribution system of any public utility has been acquired by any city or village under the provisions of Chapter 19, article 7, the condemnee, if it is also the owner of any transmission system, whether by wire, pipeline, or otherwise, from any other point to such city or village shall, at the option of such city or village, be required to render wholesale service to such city or village whether otherwise acting as wholesaler or not. If the condemnee is a public power district subject to the provisions of section 70-626.01, the obligations of the public power district to the condemner under this section shall be no greater than to other cities and villages under section 70-626.01.

Source: Laws 1957, c. 44, § 1, p. 220; Laws 2019, LB193, § 64.
Effective date September 1, 2019.

19-709 Property; acquisition for public use; limitation; purposes enumerated; procedure.

The mayor and city council of any city of the first class or city of the second class or the chairperson and members of the village board of trustees of any village shall have power to purchase or appropriate private property or school lands for the use of the city or village for streets, alleys, avenues, parks, parkways, boulevards, sanitary sewers, storm water sewers, public squares, public auditoriums, public fire stations, training facilities for firefighters, market places, public heating plants, power plants, gas works, electric light plants, wells, or waterworks, including mains, pipelines, and settling basins therefor, and to acquire outlets and the use of streams for sewage disposal. When necessary for the proper construction of any of the works described in this section, the right of appropriation shall extend such distance as may be necessary from the corporate limits of the city or village, except that no city of the first class, city of the second class, or village may acquire through the exercise of the power of eminent domain or otherwise any real estate within the

zoning jurisdiction of any other city of the first class, city of the second class, or village for any of the works enumerated in this section if the use for which the real estate is to be acquired would be contrary to or would not be a use permitted by the existing zoning ordinances and regulations of such other city or village, but such real estate may be acquired within the zoning jurisdiction of another city of the first class, city of the second class, or village for such contrary or nonpermitted use if the governing body of such other city or village approves such acquisition and use. Such power shall also include the right to appropriate for any of the purposes described in this section any plant or works already constructed, or any part thereof, whether such plant or works lie wholly within the city or village or part within and part without the city or village or beyond the corporate limits of such city or village, including all real estate, buildings, machinery, pipes, mains, hydrants, basins, and reservoirs, and all appurtenances reasonably necessary thereto and a part thereof, or connected with such works or plants, and all franchises to own and operate the same, if any. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724, except as to property specifically excluded by section 76-703 and as to which sections 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Source: Laws 1901, c. 18, § 50, p. 268; Laws 1901, c. 18, § 52, p. 270; Laws 1901, c. 18, § 54, p. 272; Laws 1901, c. 19, § 5, p. 316; Laws 1907, c. 14, § 1, p. 121; Laws 1909, c. 19, § 1, p. 184; R.S.1913, § 4904; C.S.1922, § 4072; C.S.1929, § 16-601; R.S. 1943, § 16-601; Laws 1951, c. 101, § 50, p. 464; Laws 1961, c. 44, § 1, p. 175; R.R.S.1943, § 16-601; Laws 1963, c. 88, § 1, p. 297; Laws 1965, c. 81, § 1, p. 318; Laws 1967, c. 91, § 1, p. 281; Laws 1971, LB 583, § 1; Laws 1977, LB 340, § 1; Laws 2002, LB 384, § 30; Laws 2019, LB193, § 65.
Effective date September 1, 2019.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

19-710 City council action; rights of adjoining property owner.

In cases of appeal from an action of the city council condemning real property as a nuisance or as dangerous under the police powers of the city, the owners of adjoining property may intervene in the action at any time before trial.

Source: Laws 1985, LB 532, § 1; Laws 2019, LB193, § 66.
Effective date September 1, 2019.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section	
19-901.	Zoning regulations; power to adopt; when; comprehensive development plan; planning commission; reports and hearings; purpose; validity of plan; not applicable; when.
19-902.	Zoning regulations; uniformity; manufactured homes; certain codes excepted.
19-903.	Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.

Section

- 19-904. Zoning regulations; creation; hearing; notice.
- 19-904.01. Zoning regulations; nonconforming use; continuation; termination.
- 19-905. Zoning regulations; changes; protest; notice; publication; posting; mailing; personal service; when not applicable.
- 19-907. Board of adjustment; appointment; restriction on powers.
- 19-908. Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.
- 19-909. Board of adjustment; appeals to board; record on appeal; hearing; stays.
- 19-910. Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.
- 19-911. Board of adjustment; village board of trustees may act; exception; powers and duties.
- 19-912. Board of adjustment; appeal; procedure.
- 19-912.01. Zoning board of adjustment of a county; serve municipalities, when; board of zoning appeals.
- 19-913. Zoning laws and regulations; enforcement; violations; penalties; actions.
- 19-914. Zoning regulations; conflict with other laws; effect.
- 19-915. Zoning regulations; changes; procedure; ratification.
- 19-916. Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of city or village; approval required; effect; filing and recording.
- 19-917. Additions; vacating; powers; procedure; costs.
- 19-918. Additions; subdivision; plat of streets; duty of owner to obtain approval.
- 19-919. Additions; subdivisions; plat; city council or village board of trustees; approve before recording; powers.
- 19-920. Additions; subdivisions; conform to ordinances; streets and alleys; requirements.
- 19-921. Subdivision, defined; where applicable.
- 19-922. Standard codes; applicability.
- 19-923. Notice to board of education; when; notice to military installation.
- 19-924. Repealed. Laws 2019, LB193, § 244.
- 19-925. Municipal plan; planning commission; authorized.
- 19-926. Planning commission; members; term; removal; vacancies; alternate members.
- 19-927. Planning commission; organization; meetings; rules and regulations; records.
- 19-928. Planning commission; funds, equipment, and accommodations; limit upon expenditures.
- 19-929. Planning commission; city council or village board of trustees; powers and duties; appeal.
- 19-930. Interjurisdictional planning commission; assume powers and duties of planning commission; when.
- 19-931. Interjurisdictional planning commission; members; term; vacancies.
- 19-932. Interjurisdictional planning commission; creation; elimination.

19-901 Zoning regulations; power to adopt; when; comprehensive development plan; planning commission; reports and hearings; purpose; validity of plan; not applicable; when.

(1) For the purpose of promoting health, safety, morals, or the general welfare of the community, the city council of a city of the first class or city of the second class or the village board of trustees of a village may adopt zoning regulations which regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

(2) Such powers shall be exercised only after the city council or village board of trustees has established a planning commission, received from its planning

commission a recommended comprehensive development plan as defined in section 19-903, adopted such comprehensive development plan, and received the specific recommendation of the planning commission on the adoption or amendment of zoning regulations. The planning commission shall make a preliminary report and hold public hearings on its recommendations regarding the adoption or repeal of the comprehensive development plan and zoning regulations and shall hold public hearings thereon before submitting its final report to the city council or village board of trustees. Amendments to the comprehensive plan or zoning regulations shall be considered at public hearings before submitting recommendations to the city council or village board of trustees.

(3) A comprehensive development plan as defined in section 19-903 which has been adopted and not rescinded by a city council or village board of trustees prior to May 17, 1967, shall be deemed to have been recommended and adopted in compliance with the procedural requirements of this section when, prior to the adoption of the plan by the city council or village board of trustees, a recommendation thereon had been made to the city council or village board of trustees by a zoning commission in compliance with the provisions of section 19-906, as such section existed prior to its repeal by Laws 1967, c. 92, section 7, or by a planning commission appointed under the provisions of Chapter 19, article 9, regardless of whether the planning commission had been appointed as a zoning commission.

(4) The requirement that a planning commission be appointed and a comprehensive development plan be adopted shall not apply to cities of the first class, cities of the second class, and villages which have legally adopted a zoning ordinance prior to May 17, 1967, and which have not amended the zoning ordinance or zoning map since May 17, 1967. Such city or village shall appoint a planning commission and adopt the comprehensive plan prior to amending the zoning ordinance or zoning map.

Source: Laws 1927, c. 43, § 1, p. 182; C.S.1929, § 19-901; Laws 1941, c. 131, § 8, p. 509; C.S.Supp.,1941, § 19-901; R.S.1943, § 19-901; Laws 1959, c. 65, § 1, p. 289; Laws 1967, c. 92, § 1, p. 283; Laws 1967, c. 93, § 1, p. 288; Laws 1974, LB 508, § 1; Laws 1975, LB 410, § 10; Laws 1977, LB 95, § 1; Laws 1983, LB 71, § 8; Laws 2019, LB193, § 67.

Effective date September 1, 2019.

19-902 Zoning regulations; uniformity; manufactured homes; certain codes excepted.

(1) For any or all of the purposes designated in section 19-901, the city council or village board of trustees may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914 and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within such districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations applicable to one district may differ from those applicable to other districts. If a regulation affects the Niobrara scenic river corridor as defined in section 72-2006 and is not incorporated within the boundaries of the municipality, the Niobrara Council shall act on the regulation as provided in section 72-2010.

(2)(a) The city council or village board of trustees shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The city council or village board of trustees may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council or village board of trustees may also require that manufactured homes meet the following standards:

- (i) The home shall have no less than nine hundred square feet of floor area;
- (ii) The home shall have no less than an eighteen-foot exterior width;
- (iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;
- (iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;
- (v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
- (vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

(b) The city council or village board of trustees may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.

(c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with national Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

(4) Subdivision regulations and building, plumbing, electrical, housing, fire, or health codes or similar regulations and the adoption thereof shall not be subject to sections 19-901 to 19-915.

Source: Laws 1927, c. 43, § 2, p. 183; C.S.1929, § 19-902; R.S.1943, § 19-902; Laws 1975, LB 410, § 11; Laws 1981, LB 298, § 3; Laws 1985, LB 313, § 3; Laws 1994, LB 511, § 3; Laws 1996, LB 1044, § 56; Laws 1998, LB 1073, § 3; Laws 2000, LB 1234, § 9; Laws 2019, LB193, § 68.
Effective date September 1, 2019.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

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 adopted pursuant to sections 19-901 to 19-915 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; Laws 2019, LB193, § 69.
Effective date September 1, 2019.

19-904 Zoning regulations; creation; hearing; notice.

The city council or village board of trustees of a municipality which adopts zoning regulations and restrictions pursuant to sections 19-901 to 19-915 shall provide for the manner in which such regulations and restrictions, and the boundaries of districts established pursuant to section 19-902, shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The city council or village board of trustees shall receive the advice of the planning commission before taking definite action on any contemplated amendment, supplement, change, modification, or repeal. No such regulation, restriction, or boundary shall become effective until after separate public hearings are held by both the planning commission and the city council or village board of trustees in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be given by publication thereof in a legal newspaper in or of general circulation in such municipality at least one time ten days prior to such hearing.

Source: Laws 1927, c. 43, § 4, p. 183; C.S.1929, § 19-904; R.S.1943, § 19-904; Laws 1955, c. 57, § 1, p. 185; Laws 1957, c. 45, § 1, p. 221; Laws 1967, c. 92, § 3, p. 284; Laws 1975, LB 410, § 13; Laws 1983, LB 71, § 9; Laws 2019, LB193, § 70.
Effective date September 1, 2019.

19-904.01 Zoning regulations; nonconforming use; continuation; termination.

The use of a building, structure, or land, existing and lawful at the time of the adoption of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with provisions of such regulation or amendment. Such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve months, such right to the nonconforming use shall be forfeited and any future use of the building and premises shall conform to the regulation. The city council or village board of trustees may provide in any zoning regulation for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning regulations. The city council or village board of trustees may, in any zoning regulation, provide for the termination of nonconforming uses, either by specifying the period or periods in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use

may be so fixed as to allow for the recovery of amortization of the investment in the nonconformance, except that in the case of a legally erected outdoor advertising sign, display, or device, no amortization schedule shall be used.

Source: Laws 1967, c. 92, § 4, p. 285; Laws 1975, LB 410, § 14; Laws 1981, LB 241, § 3; Laws 2019, LB193, § 71.

Effective date September 1, 2019.

19-905 Zoning regulations; changes; protest; notice; publication; posting; mailing; personal service; when not applicable.

Regulations, restrictions, and boundaries authorized to be created pursuant to sections 19-901 to 19-915 may from time to time be amended, supplemented, changed, modified, or repealed. In case of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred feet therefrom, and of those directly opposite thereto extending three hundred feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council or village board of trustees of such municipality. The provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In addition to the publication of the notice as provided in section 19-904, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be so posted at least ten days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor punishable as provided in section 19-913. If the record title owners of any lots included in such proposed change be nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten days prior to such hearing. At the option of the city council or village board of trustees of the municipality, in place of the posted notice provided in this section, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. When such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or

different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of section 19-904 shall be applicable.

Source: Laws 1927, c. 43, § 5, p. 183; C.S.1929, § 19-905; R.S.1943, § 19-905; Laws 1957, c. 45, § 2, p. 221; Laws 1967, c. 94, § 1, p. 290; Laws 1975, LB 410, § 15; Laws 2005, LB 161, § 8; Laws 2019, LB193, § 72.

Effective date September 1, 2019.

19-907 Board of adjustment; appointment; restriction on powers.

Except as provided in section 19-912.01, the city council or village board of trustees of a municipality which has adopted zoning regulations pursuant to sections 19-901 to 19-915 shall provide for the appointment of a board of adjustment. Any actions taken by the board of adjustment shall not exceed the powers granted by section 19-910.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-907; Laws 1975, LB 410, § 16; Laws 1978, LB 186, § 5; Laws 1998, LB 901, § 1; Laws 2019, LB193, § 73.

Effective date September 1, 2019.

19-908 Board of adjustment; members; term; vacancy; adopt rules; meetings; records; open to public.

The board of adjustment appointed pursuant to section 19-907 shall consist of five regular members, plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearings. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the board of adjustment shall be appointed from the membership of the planning commission, and the loss of membership on the planning commission by such member shall also result in his or her immediate loss of membership on the board of adjustment and the appointment of another planning commissioner to the board of adjustment. After September 9, 1995, the first vacancy occurring on the board of adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city or village at such time as more than two hundred persons reside within such area. Thereafter, at all times, at least one member of the board of adjustment shall reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 19-901 to 19-914. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations

and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Source: Laws 1927, c. 43, § 7, p. 184; C.S.1929, § 19-907; R.S.1943, § 19-908; Laws 1967, c. 92, § 5, p. 285; Laws 1975, LB 410, § 17; Laws 1995, LB 805, § 1; Laws 2019, LB193, § 74.
Effective date September 1, 2019.

19-909 Board of adjustment; appeals to board; record on appeal; hearing; stays.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds for such appeal. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907; R.S.1943, § 19-909; Laws 2019, LB193, § 75.
Effective date September 1, 2019.

19-910 Board of adjustment; powers; jurisdiction on appeal; variance; when permitted.

(1) The board of adjustment appointed pursuant to section 19-907 shall, subject to such appropriate conditions and safeguards as may be established by the city council or village board of trustees, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to

19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning regulation.

(2) No such variance shall be authorized by the board of adjustment unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board of adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board of adjustment may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation.

Source: Laws 1927, c. 43, § 7, p. 185; C.S.1929, § 19-907; R.S.1943, § 19-910; Laws 1967, c. 92, § 6, p. 286; Laws 1969, c. 114, § 1, p. 526; Laws 1975, LB 410, § 18; Laws 1978, LB 186, § 6; Laws 2004, LB 973, § 1; Laws 2019, LB193, § 76.
Effective date September 1, 2019.

Cross References

For other zoning boards acting as a zoning board of adjustment for a municipality, see section 19-912.01.

19-911 Board of adjustment; village board of trustees may act; exception; powers and duties.

Notwithstanding the provisions of sections 19-907 and 19-908, the village board of trustees may, except as set forth in section 19-912.01, provide by ordinance that it shall constitute a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 19-901 to 19-905 may provide that as such board of adjustment it may exercise only the powers granted to boards of adjustment by section 19-910. As such board of adjustment, the village board of trustees shall adopt rules and procedures that are in harmony with sections 19-907 to 19-910 and shall have the powers and duties of a board of adjustment provided for in such sections, and other parties shall have all the rights and privileges provided for in such sections. The concurring vote of two-thirds of the members of the village board of trustees acting as a

board of adjustment shall decide any question upon which it is required to pass as such board of adjustment.

Source: Laws 1927, c. 43, § 8, p. 186; C.S.1929, § 19-908; R.S.1943, § 19-911; Laws 1975, LB 410, § 19; Laws 1978, LB 186, § 7; Laws 1998, LB 901, § 2; Laws 2019, LB193, § 77.
Effective date September 1, 2019.

19-912 Board of adjustment; appeal; procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the district court a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of such illegality. Such petition must be presented to the court within fifteen days after the filing of the decision in the office of the board of adjustment. Upon the filing of such petition a summons shall be issued and be served upon the board of adjustment, together with a copy of the petition. Return of service shall be made within four days after the issuance of the summons. Within ten days after the return day of such summons, the board of adjustment shall file an answer to such petition which shall admit or deny the substantial allegations of the petition, and shall state the contentions of the board of adjustment with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing answer, the court shall proceed to hear and determine the cause without delay and shall render judgment thereon according to the forms of law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Such appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of adjustment and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the state regulating appeals in actions at law.

Source: Laws 1927, c. 43, § 9, p. 186; C.S.1929, § 19-909; R.S.1943, § 19-912; Laws 1963, c. 89, § 3, p. 301; Laws 2019, LB193, § 78.
Effective date September 1, 2019.

19-912.01 Zoning board of adjustment of a county; serve municipalities, when; board of zoning appeals.

The zoning board of adjustment of a county that has adopted a comprehensive development plan, as defined by section 23-114.02, and is enforcing zoning regulations based upon such a plan, shall, upon request of the governing body of a city of the second class or village, serve as the zoning board of adjustment for such city of the second class or village in that county. A city of the first class may request that the county zoning board of adjustment of the county in which it is located serve as that city's zoning board of adjustment, and such county

government shall comply with that request within ninety days. A municipality located in more than one county shall be served by request or otherwise only by the county zoning board of adjustment of the county in which the greatest area of the municipality is located, and the jurisdiction of such county zoning board of adjustment shall include all portions of the municipality and its extraterritorial zoning jurisdiction regardless of county lines. In a county in which a city of the primary class is located, the board of zoning appeals, created under section 23-174.09, may serve in the same capacity for all cities of the second class and villages in place of a zoning board of adjustment.

Source: Laws 1975, LB 317, § 5; Laws 1981, LB 298, § 4; R.S.1943, (1994), § 84-155; Laws 1998, LB 901, § 3; Laws 2019, LB193, § 79.

Effective date September 1, 2019.

Cross References

For provisions relating to boards of adjustment for cities of the first and second class and villages, see sections 19-907 to 19-912.

19-913 Zoning laws and regulations; enforcement; violations; penalties; actions.

The city council or village board of trustees may provide by ordinance for the enforcement of sections 19-901 to 19-915 and of any ordinance, regulation, or restriction made thereunder. A violation of such sections or of such ordinance or regulation is hereby declared to be a misdemeanor, and such city council or village board of trustees may provide for the punishment thereof by fine not exceeding one hundred dollars for any one offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed thirty days. Each day such violation continues after notice of violation is given to the offender may be considered a separate offense. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of sections 19-901 to 19-915 or of any ordinance or other regulation made under such sections, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

Source: Laws 1927, c. 43, § 10, p. 187; C.S.1929, § 19-910; R.S.1943, § 19-913; Laws 1975, LB 410, § 20; Laws 2019, LB193, § 80.
Effective date September 1, 2019.

19-914 Zoning regulations; conflict with other laws; effect.

Whenever the regulations made pursuant to sections 19-901 to 19-905 require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute, local ordinance, or regulation, the provisions of the regulations made under authority of such sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of

lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of such sections, the provisions of such statute, local ordinance, or regulation shall govern.

Source: Laws 1927, c. 43, § 11, p. 188; C.S.1929, § 19-911; R.S.1943, § 19-914; Laws 2019, LB193, § 81.
Effective date September 1, 2019.

19-915 Zoning regulations; changes; procedure; ratification.

(1) When any city of the first class, city of the second class, or village has enacted zoning regulations pursuant to sections 19-901 to 19-915 and as a part of such regulations has bounded and defined the various zoning or building districts with reference to a zoning map, such zoning or building districts may from time to time be changed, modified, or terminated, or additional or different zoning or building districts may from time to time be created, changed, modified, or terminated, by an appropriate amendatory action which describes the changed, modified, terminated, or created zone or district or part thereof by legal description or metes and bounds, or by republishing a part only of the original zoning map, and without republishing the original zoning map as a part of the amendatory action and without setting forth and repealing the entire section or ordinance adopting the rezoning maps, or a part of the zoning map, as a part of the amendatory action, notwithstanding the provisions of section 16-404 or 17-614.

(2) When any city of the first class, city of the second class, or village has, prior to March 21, 1969, changed the boundaries of a zoning or building district without compliance with section 16-404 or 17-614, any such amendments of the zoning ordinances shall stand as valid amendments until repealed and the action of any such city or village in executing any such amendment is expressly ratified by the Legislature.

Source: Laws 1969, c. 108, § 1, p. 509; Laws 1975, LB 410, § 21; Laws 2019, LB193, § 82.
Effective date September 1, 2019.

19-916 Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of city or village; approval required; effect; filing and recording.

(1) The city council of any city of the first class or city of the second class or the village board of trustees of any village shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such city or village, 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 city council or village board of trustees or its designated agent and such approval is endorsed on such plat or instrument.

(2) The city council or village board of trustees 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 of a city of the first class, city of the second class, or village may be included within the corporate limits and become a part of such municipality for all purposes whatsoever if approved by the city council or village board of trustees under this subsection. The proprietor or proprietors of any land within the corporate limits of any city of the first class, city of the second class, or village, or of any land contiguous or adjacent to the corporate limits of such city or village, 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 city council or village board of trustees if (a) after giving notice of the time and place of the hearing as provided in section 19-904, the planning commission and the city council or village board of trustees both hold public hearings on the inclusion of the addition within the corporate limits and (b) the city council or village board of trustees 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 city council or village board of trustees 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 city council or village board of trustees, 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 city council or village board of trustees 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; Laws 2019, LB193, § 83.
Effective date September 1, 2019.

19-917 Additions; vacating; powers; procedure; costs.

A city of the first class, city of the second class, or village may vacate any existing plat and addition to such municipality or such part or parts thereof as such municipality may deem advantageous and best for its interests, and the power hereby granted shall be exercised by such municipality upon the petition of the owner or all the owners of lots or lands in such plat or addition. Such ordinance vacating such plat or addition shall specify whether, and, if any, what public highways, streets, alleys, and public grounds thereof are to be retained by such municipality. Any such ways, streets, and public grounds not retained shall upon such vacation revert to the owner or owners of lots or lands abutting such ways, streets, and public grounds in proportion to the respective ownerships of such lots or grounds. In case of total or partial vacation of such plat or addition, the ordinance providing therefor shall be, at the cost of the owner or owners, certified to the office of the register of deeds and be there recorded by the owner or owners. The register of deeds shall note such total or partial vacation of such plat or addition by writing in plain and legible letters upon such plat or portion thereof so vacated the word vacated, and also make on the same reference to the volume and page in which such ordinance of vacation is recorded, and the owner or owners of the lots and lands in a plat so vacated shall cause the same and the proportionate part of the abutting highway, streets, alleys, and public grounds so vacated to be replatted and numbered by the city surveyor or county surveyor. When such replat so executed is acknowledged by such owner or owners and is recorded in the office of the register of deeds of such county, such property so replatted may be conveyed and assessed by the numbers given in such replat.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4812; C.S.1922, § 3980; C.S.1929, § 16-109; R.S.1943, § 16-113; Laws 1975, LB 410, § 3; Laws 2019, LB193, § 84.
Effective date September 1, 2019.

19-918 Additions; subdivision; plat of streets; duty of owner to obtain approval.

No owner of real estate within the corporate limits of a city of the first class, city of the second class, or village shall be permitted to subdivide, plat, or lay out such real estate into blocks, lots, streets, or other portions of the same intended to be dedicated for public use, or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof of the city council or village board of trustees of such municipality or its agent designated pursuant to section 19-916. Any and all additions to be made to the municipality shall be made, so far as such

additions relate to the avenues, streets, and alleys therein, under and in accordance with the provisions of sections 19-916 to 19-918.

Source: Laws 1901, c. 18, § 51, p. 269; R.S.1913, § 4813; C.S.1922, § 3981; C.S.1929, § 16-110; R.S.1943, § 16-114; Laws 1967, c. 66, § 2, p. 217; R.R.S.1943, § 16-114; Laws 1975, LB 410, § 4; Laws 1983, LB 71, § 11; Laws 2019, LB193, § 85.
Effective date September 1, 2019.

19-919 Additions; subdivisions; plat; city council or village board of trustees; approve before recording; powers.

No plat of or instruments effecting the subdivision of real property described in section 19-918 shall be recorded or have any force and effect unless such plat is approved by the city council or village board of trustees of such municipality or its agent designated pursuant to section 19-916. The city council or village board of trustees of such municipality shall have power, by ordinance, to provide the manner, plan, or method by which real property in any such area 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 the same, and to prohibit the sale or offering for sale of, and the construction of buildings and other improvements on, any lots or parts of real property not subdivided, platted, or laid out as required in sections 19-918 and 19-920.

Source: Laws 1967, c. 66, § 3, p. 217; R.R.S.1943, § 16-114.01; Laws 1975, LB 410, § 5; Laws 1983, LB 71, § 12; Laws 2019, LB193, § 86.
Effective date September 1, 2019.

19-920 Additions; subdivisions; conform to ordinances; streets and alleys; requirements.

The city council of any city of the first class or city of the second class or the board of trustees of any village shall have power to compel the owner of any real property described in section 19-918 in subdividing, platting, or laying out the same to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance therewith.

Source: Laws 1967, c. 66, § 4, p. 217; R.R.S.1943, § 16-114.02; Laws 1975, LB 410, § 6; Laws 2019, LB193, § 87.
Effective date September 1, 2019.

19-921 Subdivision, defined; where applicable.

For the purposes of sections 16-901 to 16-905 and 19-916 to 19-920, in the area where a city of the first class, city of the second class, or village has a comprehensive plan and has adopted subdivision regulations pursuant thereto, subdivision shall mean the division of lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be a subdivision when the smallest parcel created is more than ten acres in area.

Source: Laws 1973, LB 241, § 2; R.R.S.1943, § 16-114.03; Laws 1975, LB 410, § 7; Laws 1993, LB 208, § 5; Laws 2019, LB193, § 88.
Effective date September 1, 2019.

19-922 Standard codes; applicability.

Any standard code adopted and approved by a city of the first class, city of the second class, or village as provided in section 18-132 and the building permit requirements or occupancy permit requirements imposed by any such code or by section 19-913 shall apply to all of the city or village and within the extraterritorial zoning jurisdiction of such city or village.

Source: Laws 1975, LB 410, § 8; Laws 1986, LB 960, § 12; Laws 1987, LB 483, § 1; Laws 2014, LB802, § 1; Laws 2016, LB704, § 210; Laws 2019, LB193, § 89.
Effective date September 1, 2019.

19-923 Notice to board of education; when; notice to military installation.

(1) In order to provide for orderly school planning and development, a city of the first class, city of the second class, or village 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 city of the first class, city of the second class, or village is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, such city or village shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city or village if the city or village has received a written request for such notification from the military installation. The city or village 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) Plats of subdivisions approved by the agent of a city or village 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; Laws 2019, LB193, § 90.
Effective date September 1, 2019.

19-924 Repealed. Laws 2019, LB193, § 244.**19-925 Municipal plan; planning commission; authorized.**

Any city of the first class, city of the second class, or village is hereby authorized and empowered to make, adopt, amend, extend, and carry out a municipal plan as provided in sections 19-925 to 19-933 and to create by ordinance a planning commission with the powers and duties set forth in such sections. The planning commission of a city shall be designated the city planning commission or city plan commission, and the planning commission of

a village shall be designated the village planning commission or village plan commission.

Source: Laws 1937, c. 39, § 2, p. 176; C.S.Supp.,1941, § 18-2102; R.S. 1943, (1983), § 18-1302; Laws 1993, LB 207, § 2; Laws 2019, LB193, § 91.
Effective date September 1, 2019.

19-926 Planning commission; members; term; removal; vacancies; alternate members.

(1) The planning commission of a city of the first class, city of the second class, or village shall consist of nine regular members who shall represent, as far as is possible, the different professions or occupations in the city or village and shall be appointed by the mayor by and with the approval of a majority vote of the members of the city council or by the chairperson of the village board of trustees by and with the approval of a majority vote of the members of the village board of trustees. Two of the regular members may be residents of the area designated pursuant to section 16-902 or 17-1001 over which the city or village is exercising extraterritorial zoning jurisdiction. When there is a sufficient number of residents in such area over which the city or village exercises extraterritorial zoning jurisdiction, one regular member of the commission shall be a resident from such area. If it is determined by the city council or village board of trustees that a sufficient number of residents reside in such area, and no such resident is a regular member of the commission, the first available vacancy on the commission shall be filled by the appointment of such an individual. For purposes of this section, a sufficient number of residents shall mean: (a) For a village, two hundred residents; (b) for a city of the second class, five hundred residents; and (c) for a city of the first class, one thousand residents. A number of commissioners equal to a majority of the number of regular members appointed to the commission shall constitute a quorum for the transaction of any business. All regular members of the commission shall serve without compensation. The term of each regular member shall be three years, except that three regular members of the first commission to be so appointed shall serve for terms of one year, three for terms of two years, and three for terms of three years. All regular members shall hold office until their successors are appointed. Any member may, after a public hearing before the city council or village board of trustees, be removed by the mayor with the consent of a majority vote of the members of the city council or by the chairperson of the village board of trustees with the consent of a majority vote of the members of the village board of trustees for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. Vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired portion of the term by appointment by the mayor or the chairperson of the village board of trustees.

(2) Notwithstanding the provisions of subsection (1) of this section, the planning commission for any city of the second class or village may have either five, seven, or nine regular members as the city council or village board of trustees establishes by ordinance. If a city or village planning commission has either five or seven regular members, approximately one-third of the regular 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.

(3) A city of the first class, a city of the second class, or a village may, by ordinance, provide for the appointment of one alternate member to the planning commission who shall be chosen by the mayor with the approval of a majority vote of the members of the city council or by the chairperson of the village board of trustees with the approval of a majority vote of the members of the village board of trustees. The alternate member shall serve without compensation. The term of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved. The alternate member may be removed from office in the same manner as a regular member. If the alternate member position becomes vacant other than through the expiration of the term, the vacancy shall be filled for the unexpired portion of the term by the mayor with the approval of a majority vote of the members of the city council or by the chairperson of the village board of trustees with the approval of a majority vote of the members of the village board of trustees. The alternate member may attend any meeting and may serve as a voting and participating member of the commission at any time when less than the full number of regular commission members is present and capable of voting.

(4) A regular or alternate member of the planning commission may hold any other municipal office except (a) mayor, (b) a member of the city council or village board of trustees, (c) a member of any community redevelopment authority or limited community redevelopment authority created under section 18-2102.01, or (d) a member of any citizen advisory review committee created under section 18-2715.

Source: Laws 1937, c. 39, § 3, p. 176; C.S.Supp.,1941, § 18-2103; R.S. 1943, § 18-1303; Laws 1975, LB 410, § 9; Laws 1978, LB 186, § 3; R.S.1943, (1983), § 18-1303; Laws 1988, LB 934, § 6; Laws 1995, LB 193, § 1; Laws 2017, LB383, § 3; Laws 2019, LB193, § 92.

Effective date September 1, 2019.

19-927 Planning commission; organization; meetings; rules and regulations; records.

The planning commission of a city of the first class, city of the second class, or village shall elect its chairperson from its members and create and fill such other of its offices as it may determine. The term of the chairperson shall be one year, and he or she shall be eligible for reelection. The commission shall hold at least one regular meeting in each calendar quarter, except the city council or village board of trustees may require the commission to meet more frequently and the chairperson of the commission may call for a meeting when necessary to deal with business pending before the commission. The commission shall adopt rules and regulations for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record.

Source: Laws 1937, c. 39, § 4, p. 177; C.S.Supp.,1941, § 18-2104; R.S. 1943, (1983), § 18-1304; Laws 1997, LB 426, § 1; Laws 2019, LB193, § 93.

Effective date September 1, 2019.

19-928 Planning commission; funds, equipment, and accommodations; limit upon expenditures.

The city council or village board of trustees may provide the funds, equipment, and accommodations necessary for the work of the planning commission of a city of the first class, city of the second class, or village, but the expenditures of the commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the city council or village board of trustees. No expenditures or agreements for expenditures shall be valid in excess of such amounts.

Source: Laws 1937, c. 39, § 5, p. 177; C.S.Supp.,1941, § 18-2105; R.S. 1943, § 19-928; Laws 2019, LB193, § 94.
Effective date September 1, 2019.

19-929 Planning commission; city council or village board of trustees; powers and duties; appeal.

(1) Except as provided in sections 19-930 to 19-933, the planning commission of a city of the first class, city of the second class, or village shall (a) make and adopt plans for the physical development of the city or village, including any areas outside its boundaries which in the commission's judgment bear relation to the planning of such city or village and including a comprehensive development plan as defined by section 19-903, (b) prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested municipal departments, and (c) consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens with relation to the promulgation and implementation of the comprehensive development plan and its implemental programs. The commission may delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports. The city council or village board of trustees shall not take final action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, annexation of territory, or zoning until it has received the recommendation of the planning commission if such commission in fact has been created and is existent. The city council or village board of trustees shall by ordinance set a reasonable time within which the recommendation from the planning commission is to be received. A recommendation from the planning commission shall not be required for 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, if the city council or village board of trustees has designated, by ordinance, an agent pursuant to section 19-916.

(2) The planning commission may, with the consent of the city council or village board of trustees, in its own name (a) make and enter into contracts with public or private bodies, (b) receive contributions, bequests, gifts, or grant funds from public or private sources, (c) expend the funds appropriated to it by the city or village, (d) employ agents and employees, and (e) acquire, hold, and dispose of property.

The planning 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.

(3) The planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the city council or village board of trustees has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures adopted by the commission 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 zoning ordinance 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 power to grant conditional uses or special exceptions shall be the exclusive authority of the commission, except that the city council or village board of trustees may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the zoning ordinance. The city council or village board of trustees 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 will promote the public interest. An appeal of a decision by the commission or the city council or village board of trustees regarding a conditional use or special exception shall be made to the district court.

Source: Laws 1937, c. 39, § 6, p. 177; C.S.Supp.,1941, § 18-2106; R.S. 1943, § 18-1306; Laws 1967, c. 85, § 2, p. 269; Laws 1978, LB 186, § 4; Laws 1983, LB 71, § 6; R.S.1943, (1983), § 18-1306; Laws 1993, LB 207, § 3; Laws 1993, LB 209, § 1; Laws 1994, LB 630, § 5; Laws 2004, LB 973, § 2; Laws 2019, LB193, § 95. Effective date September 1, 2019.

19-930 Interjurisdictional planning commission; assume powers and duties of planning commission; when.

(1) For any matter within the jurisdiction of a planning commission of a city of the first class, city of the second class, or village relating to that portion of the extraterritorial zoning jurisdiction of the city or village as defined in section 16-901 or 17-1001 which is within a county other than the county in which the city or village is located, the powers, duties, responsibilities, and functions of the planning commission of the city or village with regard to such matter shall be assumed by the interjurisdictional planning commission of the city or village established under section 19-931 when the formation of such a commission is requested by either the city or village or the county within which the city or village is not located as provided in subsection (2) of this section.

(2) Any city or village exercising extraterritorial zoning jurisdiction as defined in section 16-901 or 17-1001 within a county other than the county within which the city or village is located or the county within which such city or village is exercising extraterritorial zoning jurisdiction may, by formal resolution of a majority of the voting members of the city council, village board of trustees, or county board, request the formation of an interjurisdictional planning commission to exercise the jurisdiction granted by sections 19-930 to

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATIONS 19-1101

19-933. Such resolution shall be transmitted to the appropriate city or village or county and its receipt formally acknowledged.

Source: Laws 1993, LB 207, § 4; Laws 2019, LB193, § 96.
Effective date September 1, 2019.

19-931 Interjurisdictional planning commission; members; term; vacancies.

The interjurisdictional planning commission of a city of the first class, city of the second class, or village shall consist of six members. Three members shall be chosen from the membership of the planning commission of the city or village by the mayor with the approval of the city council or by the chairperson of the village board of trustees with the approval of the village board of trustees. Three members shall be chosen by the county board of the county within which the city or village exercises zoning jurisdiction under the circumstances specified in section 19-930. The three members chosen by the county board shall be members of the county planning commission as described in section 23-114.01. Members of the interjurisdictional planning commission shall serve without compensation and without reimbursement for expenses incurred pursuant to carrying out sections 19-930 to 19-933 for terms of one year. Members shall hold office until their successors are appointed and qualified. Vacancies shall be filled by appointment by the body which appointed the member creating the vacancy.

Source: Laws 1993, LB 207, § 5; Laws 2019, LB193, § 97.
Effective date September 1, 2019.

19-932 Interjurisdictional planning commission; creation; elimination.

A city or village exercising extraterritorial zoning jurisdiction under the circumstances set out in section 19-930 shall create an interjurisdictional planning commission by ordinance within sixty days after the formal passage of a resolution pursuant to subsection (2) of section 19-930. All matters filed with the city or village within ninety days after such date which are properly within the jurisdiction of the interjurisdictional planning commission shall, after the effective date of the ordinance, be referred to such commission until such time as both the city or village and the county agree by majority vote of each governing body to eliminate the interjurisdictional planning commission and transfer its jurisdiction to the planning commission of the city or village.

Source: Laws 1993, LB 207, § 6; Laws 2019, LB193, § 98.
Effective date September 1, 2019.

ARTICLE 11

TREASURER'S REPORT AND COUNCIL PROCEEDINGS; PUBLICATION

Section

- 19-1101. City treasurer or village treasurer; report for fiscal year; publication.
- 19-1102. City clerk or village clerk; proceedings of city council or village board of trustees; publication; contents.
- 19-1103. Reports and proceedings; how published; cost.
- 19-1104. Violations; penalty.

19-1101 City treasurer or village treasurer; report for fiscal year; publication.

The city treasurer or village treasurer of each city or village that has a population of not more than one hundred thousand inhabitants as determined

by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall prepare and publish annually within sixty days after the close of its municipal fiscal year a statement of the receipts and expenditures of funds of the city or village for the preceding fiscal year. The statement shall also include the information required by subsection (3) of section 16-318 or subsection (2) of section 17-606. Not more than the legal rate provided for in section 33-141 shall be charged and paid for such publication.

Source: Laws 1919, c. 183, § 2, p. 410; C.S.1922, § 4377; C.S.1929, § 17-575; R.S.1943, § 19-1101; Laws 1959, c. 66, § 1, p. 292; Laws 1992, LB 415, § 2; Laws 2013, LB112, § 5; Laws 2017, LB113, § 29; Laws 2019, LB193, § 99.
Effective date September 1, 2019.

Cross References

City of the first class, receipts and expenditures, publication requirements, see section 16-722.

19-1102 City clerk or village clerk; proceedings of city council or village board of trustees; publication; contents.

It shall be the duty of each city clerk or village clerk in every city or village having a population of not more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census to prepare and publish the official proceedings of the city council or village board of trustees within thirty days after any meeting of the city council or village board of trustees. The publication shall be in a legal newspaper in or of general circulation in the city or village, shall set forth a statement of the proceedings of the meeting, and shall also include the amount of each claim allowed, the purpose of the claim, and the name of the claimant, except that the aggregate amount of all payroll claims may be included as one item. Between July 15 and August 15 of each year, the employee job titles and the current annual, monthly, or hourly salaries corresponding to such job titles shall be published. Each job title published shall be descriptive and indicative of the duties and functions of the position. The charge for the publication shall not exceed the rates provided for in section 23-122.

Source: Laws 1919, c. 183, § 1, p. 410; C.S.1922, § 4376; C.S.1929, § 17-574; R.S.1943, § 19-1102; Laws 1975, LB 193, § 1; Laws 1992, LB 415, § 3; Laws 2017, LB113, § 30; Laws 2019, LB193, § 100.
Effective date September 1, 2019.

19-1103 Reports and proceedings; how published; cost.

Publication under sections 19-1101 and 19-1102 shall be made in one legal newspaper in or of general circulation in such city or village. If no legal newspaper in or of general circulation is published in the city or village, then such publication shall be made in one legal newspaper published in or of general circulation within the county in which such city or village is located. The cost of publication shall be paid out of the general funds of such city or village.

Source: Laws 1919, c. 183, § 3, p. 410; C.S.1922, § 4378; C.S.1929, § 17-576; R.S.1943, § 19-1103; Laws 1986, LB 960, § 13; Laws 2019, LB193, § 101.
Effective date September 1, 2019.

19-1104 Violations; penalty.

Any city clerk, village clerk, city treasurer, or village treasurer failing or neglecting to comply with sections 19-1101 to 19-1103 shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined, not to exceed twenty-five dollars, and be liable, in addition to removal from office for such failure or neglect.

Source: Laws 1919, c. 183, § 4, p. 410; C.S.1922, § 4379; C.S.1929, § 17-577; R.S.1943, § 19-1104; Laws 2019, LB193, § 102.
Effective date September 1, 2019.

ARTICLE 13**FUNDS**

(Applicable to cities of the first or second class and villages.)

Section

- 19-1301. Sinking funds; gifts; authority to receive; real estate; management.
- 19-1302. Sinking funds; purposes; tax to establish; amount of levy; when authorized.
- 19-1303. Sinking fund; resolution to establish; contents; election; laws governing.
- 19-1304. Sinking funds; investments authorized; limitation upon use.
- 19-1305. Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.
- 19-1306. Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.
- 19-1307. Public utilities; combined revenue bonds; objections; submit to electors; effect.
- 19-1308. Sections, how construed.
- 19-1309. Public funds; all-purpose levy; maximum limit.
- 19-1310. Public funds; all-purpose levy; allocation.
- 19-1311. Public funds; all-purpose levy; length of time effective; abandonment.
- 19-1312. Public funds; all-purpose levy; certification.

19-1301 Sinking funds; gifts; authority to receive; real estate; management.

All cities of the first class, cities of the second class, and villages are hereby empowered to receive money or property by donation, bequest, gift, devise, or otherwise for the benefit of any one or more of the public purposes for which sinking funds are established by sections 19-1301 to 19-1304, as stipulated by the donor. Title to any money or property so donated shall vest in the city councils or village boards of trustees of such cities or villages, or in their successors in office, who shall become the owners thereof in trust to the uses of such sinking fund or funds. In the event of a donation of real estate, such city councils or village boards of trustees may manage such real estate as in the case of real estate donated to their respective municipalities for municipal library purposes under sections 51-215 and 51-216.

Source: Laws 1939, c. 12, § 1, p. 80; C.S.Supp.,1941, § 19-1301; R.S. 1943, § 19-1301; Laws 2019, LB193, § 103.
Effective date September 1, 2019.

19-1302 Sinking funds; purposes; tax to establish; amount of levy; when authorized.

The city council of any city of the first class or city of the second class or the village board of trustees of any village, subject to all the limitations set forth in sections 19-1301 to 19-1304, shall have the power to levy a tax of not to exceed ten and five-tenths cents on each one hundred dollars in any one year upon the

taxable value of all the taxable property within such municipality for a term of not to exceed ten years, in addition to the amount of tax which may be annually levied for the purposes of the adopted budget statement of such municipality, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of any one or more of the following public improvements, including acquisition of any land incident to the making thereof: Municipal libraries; municipal auditoriums or community houses for social or recreational purposes; city or village halls; municipal public libraries, auditoriums, or community houses in a single building; municipal swimming pools; municipal jails; municipal fire stations, together with firefighting equipment or apparatus; municipal parks; municipal cemeteries; municipal medical buildings, together with furnishings and equipment; or municipal hospitals. No such city or village shall be authorized to levy the tax or to establish the sinking fund as provided in this section if, having bonded indebtedness, such city or village has been in default in the payment of interest thereon or principal thereof for a period of ten years prior to the date of the passage of the resolution providing for the submission of the proposition for establishment of the sinking fund as required in section 19-1303.

Source: Laws 1939, c. 12, § 2, p. 80; C.S.Supp.,1941, § 19-1302; R.S. 1943, § 19-1302; Laws 1953, c. 287, § 35, p. 951; Laws 1961, c. 59, § 1, p. 217; Laws 1967, c. 95, § 1, p. 292; Laws 1969, c. 145, § 26, p. 669; Laws 1979, LB 187, § 80; Laws 1992, LB 719A, § 80; Laws 2019, LB193, § 104.
Effective date September 1, 2019.

19-1303 Sinking fund; resolution to establish; contents; election; laws governing.

Before any sinking fund or funds shall be established or before any annual tax shall be levied for planned municipal improvements mentioned in section 19-1302, by a city or village, the city council or village board of trustees shall declare its purpose by resolution to submit to the qualified electors of the city or village at the next general municipal election the proposition to provide such city or village with the specific municipal improvement planned under sections 19-1301 to 19-1304. Such resolution of submission shall, among other things, set forth a clear description of the improvement planned, the estimated cost according to the prevailing costs, the amount of annual levy over a definite period of years, not exceeding ten years, required to provide such cost, and the specific name or designation for the sinking fund sought to be established to carry out the planned improvement, together with a statement of the proposition for placement upon the ballot at such election. Notice of the submission of the proposition, together with a copy of the official ballot containing such proposition, shall be published in its entirety three successive weeks before the day of the election in a legal newspaper in or of general circulation in the municipality or, if no legal newspaper is in or of general circulation in the municipality, in a legal newspaper in or of general circulation in the county in which such city or village is located. No such sinking fund shall be established unless the same shall have been authorized by a majority or more of the legal votes of such city or village cast for or against the proposition. If less than a majority of the legal votes favor the establishment of the sinking fund, the planned improvement shall not be made, no annual tax shall be levied therefor,

and no sinking fund or sinking funds shall be established in connection therewith, but such resolution of submission shall immediately be repealed. If the proposition shall carry at such election in the manner prescribed in this section, the city council or village board of trustees and its successors in office shall proceed to do all things authorized under such resolution of submission but never inconsistent with sections 19-1301 to 19-1304. The election provided for under this section shall be conducted as provided under the Election Act.

Source: Laws 1939, c. 12, § 3, p. 81; C.S.Supp.,1941, § 19-1303; R.S. 1943, § 19-1303; Laws 1961, c. 59, § 2, p. 217; Laws 1986, LB 960, § 14; Laws 2019, LB193, § 105.
Effective date September 1, 2019.

Cross References

Election Act, see section 32-101.

19-1304 Sinking funds; investments authorized; limitation upon use.

All funds received by the city treasurer or village treasurer, by donation or by tax levy, as provided in sections 19-1301 to 19-1304, shall, as they accumulate, be immediately invested by such treasurer, with the written approval of the city council or village board of trustees, in the manner provided in section 77-2341. Whenever investments of such sinking fund or funds are made, the nature and character of the same shall be reported to the city council or village board of trustees, and such investment report shall be made a matter of record by the city clerk or village clerk in the proceedings of such city council or village board of trustees. The sinking fund, or sinking funds, accumulated under sections 19-1301 to 19-1304, shall constitute a special fund, or funds, for the purpose or purposes for which such fund or funds were authorized and shall not be used for any other purpose unless authorized by sixty percent of the qualified electors of such municipality voting at a general election favoring such change in the use of such sinking fund or sinking funds. The question of the change in the use of such sinking fund or sinking funds, when it shall fail to carry, shall not be resubmitted in substance for a period of one year from and after the date of such election.

Source: Laws 1939, c. 12, § 4, p. 82; C.S.Supp.,1941, § 19-1304; R.S. 1943, § 19-1304; Laws 2019, LB193, § 106.
Effective date September 1, 2019.

19-1305 Public utilities; extension and improvements; indebtedness; pledge of revenue; combined revenue bonds.

Any city of the first class, city of the second class, or village in the State of Nebraska, which owns and operates public utilities consisting of a waterworks plant, water system, sanitary sewer system, gas plant, gas system, electric light and power plant, or electric distribution system, may pay for extensions and improvements to any of such public utilities by issuing and selling its combined revenue bonds and securing the payment thereof by pledging and hypothecating the revenue and earnings of any two or more of such public utilities and may enter into such contracts in connection therewith as may be necessary or proper. Such combined revenue bonds shall not be general obligations of the city or village issuing the bonds and no taxes shall be levied for their payment but such bonds shall be a lien only upon the revenue and earnings of the public

utilities owned and operated by the municipality and which are pledged for their payment.

Source: Laws 1945, c. 38, § 1, p. 191; Laws 1963, c. 92, § 1, p. 315; Laws 2019, LB193, § 107.

Effective date September 1, 2019.

19-1306 Public utilities; plans and specifications; notice; contents; revenue bonds, sale; procedure; subsequent issuance of revenue bonds; procedure.

The city council or village board of trustees of a city or village seeking to issue revenue bonds pursuant to section 19-1305 shall first cause plans and specifications for such proposed extensions and improvements and an estimate of the cost thereof to be made by the city engineer or village engineer or by a special engineer employed for that purpose. Such plans, specifications, and estimate of cost, after being approved and adopted by the city council or village board of trustees, shall be filed with the city clerk or village clerk and be open to public inspection. The city council or village board of trustees shall then, by resolution entered in the minutes of its proceedings, direct that public notice be given in regard thereto. Such notice shall state: (1) The general nature of the improvements or extensions proposed to be made; (2) that the plans, specifications, and estimate thereof are on file in the office of the city clerk or village clerk and are open to public inspection; (3) the estimated cost thereof; (4) that it has proposed to pay for the same by combined revenue bonds; (5) the principal amount of such bonds which it proposes to issue; (6) the maximum rate of interest which such bonds will bear; (7) that the payment of such bonds will be a lien upon and will be secured by a pledge of the revenue and earnings of certain public utilities; (8) the names of the utilities whose revenue and earnings are to be so pledged; (9) that any qualified elector of the city or village may file written objections to the issuance of such bonds with the city clerk or village clerk within twenty days after the first publication of such notice; (10) that if such objections are filed within such time by qualified electors of the city or village, equal in number to forty percent of the electors of the city or village who voted at the last preceding general municipal election, the bonds will not be issued unless the issuance of such bonds is otherwise authorized in accordance with law; and (11) that if such objections are not so filed by such percentage of such electors, the city council or village board of trustees of such city or village proposes to pass an ordinance authorizing the sale of such bonds and making such contracts with reference thereto as may be necessary or proper. Such notice shall be signed by the city clerk or village clerk and be published three consecutive weeks in a legal newspaper published in or of general circulation in such city or village. Once combined revenue bonds have been issued pursuant to this section or section 18-1101, the procedure outlined in this section shall not be required to issue additional combined revenue bonds unless an additional public utility not previously included is to be combined with the bonds contemplated to be issued.

Source: Laws 1945, c. 38, § 2, p. 192; Laws 1975, LB 446, § 2; Laws 2019, LB193, § 108.

Effective date September 1, 2019.

19-1307 Public utilities; combined revenue bonds; objections; submit to electors; effect.

If the electors of a city or village, equal in number to forty percent of the electors of such city or village voting at the last preceding general municipal election, file written objections to proposed issuance of combined revenue bonds pursuant to section 19-1305 with the city clerk or village clerk within twenty days after the first publication of the notice given pursuant to section 19-1306, the city council or village board of trustees shall submit such proposition of issuing such bonds to the electors of such city or village at a special election called for that purpose or at a general city or village election, notice of which shall be given by publication in a legal newspaper published in or of general circulation in such city or village three consecutive weeks. If a majority of the qualified electors of such city or village, voting upon the proposition, vote in favor of issuing such bonds, the city council or village board of trustees may issue and sell such combined revenue bonds and pledge, for the payment of same, the revenue and earnings of the public utilities owned and operated by the city or village, as proposed in such notice, and enter into such contracts in connection therewith as may be necessary or proper. Such bonds shall draw interest from and after the date of the issuance thereof. In the event the electors fail to approve the proposition by such majority vote, such proposition shall not be again submitted to the electors for their consideration until one year has elapsed from the date of such election.

Source: Laws 1945, c. 38, § 3, p. 193; Laws 1969, c. 51, § 72, p. 319; Laws 2019, LB193, § 109.
Effective date September 1, 2019.

19-1308 Sections, how construed.

Sections 19-1305 to 19-1308 are supplementary to existing statutes and confer upon and give to cities of the first class, cities of the second class, and villages powers not heretofore granted, and sections 19-1305 to 19-1308 shall not be construed as repealing or amending any existing statute.

Source: Laws 1945, c. 38, § 4, p. 194; Laws 2019, LB193, § 110.
Effective date September 1, 2019.

19-1309 Public funds; all-purpose levy; maximum limit.

Notwithstanding any other provision of law to the contrary, for any fiscal year the governing body of any city of the first class, city of the second class, or village may decide to certify to the county clerk for collection one all-purpose levy required to be raised by taxation for all municipal purposes instead of certifying a schedule of levies for specific purposes added together. Subject to the limits in section 77-3442, such all-purpose levy shall not exceed an annual levy of eighty-seven and five-tenths cents on each one hundred dollars for cities of the first class and one dollar and five cents on each one hundred dollars for cities of the second class and villages upon the taxable valuation of all the taxable property in such city or village. Otherwise authorized extraordinary levies to service and pay bonded indebtedness of such municipalities may be made by such municipalities in addition to such all-purpose levy.

Source: Laws 1957, c. 47, § 1, p. 227; Laws 1959, c. 67, § 1, p. 293; Laws 1965, c. 83, § 1, p. 322; Laws 1967, c. 96, § 1, p. 293; Laws 1971, LB 845, § 1; Laws 1972, LB 1143, § 1; Laws 1979, LB 187, § 81;

Laws 1992, LB 719A, § 81; Laws 1996, LB 1114, § 35; Laws 2019, LB193, § 111.

Effective date September 1, 2019.

19-1310 Public funds; all-purpose levy; allocation.

If the method provided in section 19-1309 is followed in municipal financing, the city or village shall allocate the amount so raised to the several departments of such city or village in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such city or village shall deem wisest and best.

Source: Laws 1957, c. 47, § 2, p. 227; Laws 1967, c. 96, § 2, p. 294; Laws 2019, LB193, § 112.

Effective date September 1, 2019.

19-1311 Public funds; all-purpose levy; length of time effective; abandonment.

Should any city of the first class, city of the second class, or village elect to follow the method provided in section 19-1309, such city or village shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

Source: Laws 1957, c. 47, § 3, p. 227; Laws 1967, c. 96, § 3, p. 294; Laws 2019, LB193, § 113.

Effective date September 1, 2019.

19-1312 Public funds; all-purpose levy; certification.

If it is necessary to certify the amount of an all-purpose levy under section 19-1309 to county officers for collection, such levy shall be certified as a single amount for general fund purposes.

Source: Laws 1957, c. 47, § 4, p. 227; Laws 1967, c. 96, § 4, p. 294; Laws 2019, LB193, § 114.

Effective date September 1, 2019.

ARTICLE 14

LIGHT, HEAT, AND ICE

(Applicable to all except cities of the metropolitan class.)

Section

19-1401. Municipal heat, light, and ice plants; construction; operation.

19-1402. Municipal heat, light, and ice plants; cost; how defrayed.

19-1403. Municipal heat, light, and ice plants; bonds; interest; amount; approval of electors; tax.

19-1404. Municipal heat, light, and ice plants; management; rates; service.

19-1401 Municipal heat, light, and ice plants; construction; operation.

Cities of the primary class, cities of the first class, cities of the second class, and villages shall have the power to purchase, construct, maintain, and improve heating and lighting systems and ice plants for the use of their respective municipalities and the inhabitants thereof.

Source: Laws 1919, c. 181, § 1, p. 404; Laws 1921, c. 128, § 1, p. 538; C.S.1922, § 4396; C.S.1929, § 18-101; R.S.1943, § 19-1401; Laws 2019, LB193, § 115.

Effective date September 1, 2019.

19-1402 Municipal heat, light, and ice plants; cost; how defrayed.

The cost of purchasing, constructing, maintaining, and improving utilities under section 19-1401 may be defrayed by the levy of a tax of not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for a heating or lighting plant and of not to exceed two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year for an ice plant, or when such tax is insufficient for the purpose, the cost of such utilities may be defrayed by the issuance of bonds of the municipality.

Source: Laws 1919, c. 181, § 2, p. 405; C.S.1922, § 4397; C.S.1929, § 18-102; R.S.1943, § 19-1402; Laws 1953, c. 287, § 36, p. 952; Laws 1979, LB 187, § 82; Laws 1992, LB 719A, § 82; Laws 2019, LB193, § 116.
Effective date September 1, 2019.

19-1403 Municipal heat, light, and ice plants; bonds; interest; amount; approval of electors; tax.

The question of issuing bonds for any of the purposes described in section 19-1401 shall be submitted to the electors at an election held for that purpose after not less than thirty days' notice thereof has been given (1) by publication in a legal newspaper published in or of general circulation in the municipality or (2) if no legal newspaper is published in or of general circulation in such municipality, by posting in five or more public places in such municipality. Such bonds may be issued only when a majority of the electors voting on the question favor their issuance. Such bonds shall bear interest, payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction or the purchase of a heating or lighting plant shall not exceed four percent of the taxable value of the assessed property and, for the construction or purchase of an ice plant, shall not exceed one percent of the taxable value of the assessed property within such municipality, as shown by the last annual assessment. The city council or village board of trustees shall levy annually a sufficient tax to maintain, operate, and extend any system or plant and to provide for the payment of the interest on and principal of any bonds that may have been or shall be issued as provided in this section.

Source: Laws 1919, c. 181, § 3, p. 405; Laws 1921, c. 128, § 2, p. 538; C.S.1922, § 4398; C.S.1929, § 18-103; R.S.1943, § 19-1403; Laws 1955, c. 59, § 1, p. 188; Laws 1969, c. 51, § 73, p. 320; Laws 1971, LB 534, § 24; Laws 1992, LB 719A, § 83; Laws 2019, LB193, § 117.
Effective date September 1, 2019.

19-1404 Municipal heat, light, and ice plants; management; rates; service.

When any utility shall have been established pursuant to section 19-1401, the municipality shall provide by ordinance for the management thereof, the rates to be charged, and the manner of payment for service or for the product.

Source: Laws 1919, c. 181, § 4, p. 405; C.S.1922, § 4399; C.S.1929, § 18-104; R.S.1943, § 19-1404; Laws 2019, LB193, § 118.
Effective date September 1, 2019.

ARTICLE 15

INCOMPLETELY PERFORMED CONTRACTS
(Applicable to all except cities of the metropolitan class.)

Section

- 19-1501. Incompletely performed contracts; acceptance; tax levy; bond issue.
 19-1502. Additional authority granted.

19-1501 Incompletely performed contracts; acceptance; tax levy; bond issue.

In all cases where a city of the primary class, city of the first class, city of the second class, or village has entered into a contract for paving or otherwise improving a street or streets, or for the construction or improvement of a system of waterworks or sanitary or storm sewers, and the contract has not been completed on account of any order or regulation issued by the United States or any board or agency thereof, such city or village may accept that part of the work which has been completed, levy special assessments and taxes, and issue bonds to pay the cost of the work so completed and accepted, in the same manner and on the same conditions as if such contract had been fully completed.

Source: Laws 1943, c. 40, § 1, p. 184; R.S.1943, § 19-1501; Laws 2019, LB193, § 119.
 Effective date September 1, 2019.

19-1502 Additional authority granted.

Section 19-1501 shall be construed as granting additional authority and not as repealing any existing statutory authority.

Source: Laws 1943, c. 40, § 2, p. 185; R.S.1943, § 19-1502; Laws 2019, LB193, § 120.
 Effective date September 1, 2019.

ARTICLE 18

CIVIL SERVICE ACT

Section

- 19-1826. Terms, defined.
 19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.
 19-1829. Employees subject to act; appointment; promotion.
 19-1830. Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.
 19-1833. Civil service; employees; discharge; demotion; procedure; investigation; appeal.
 19-1834. Civil service; municipality provide facilities and assistance.
 19-1836. Civil service; creation or elimination of positions.
 19-1839. Civil service commission; conduct of litigation; representation.
 19-1846. Municipality; duty to make appropriation.

19-1826 Terms, defined.

As used in the Civil Service Act, unless the context otherwise requires:

(1) Agreement means an agreement pursuant to the Interlocal Cooperation Act;

(2) Appointing authority means: (a) In a mayor and council form of government, the mayor with the approval of the city 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 plan of government, the mayor and city council or village board of trustees; (c) in a village form of government, the village board of trustees; and (d) in a city manager plan of government, the city manager;

(3) Appointment means all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service;

(4) Commission means a civil service commission created pursuant to the Civil Service Act;

(5) Commissioner means a member of the commission;

(6) Existing commission means a civil service commission of a city of the first class as it existed immediately prior to the effective creation of a merged commission;

(7) Full-time firefighter means a duly appointed firefighter who is paid regularly by a municipality and for whom firefighting is a full-time career, but does not include any clerical, custodial, or maintenance personnel who is not engaged in fire suppression;

(8) Full-time police officer means a police officer in a position which requires certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who has the power of arrest, who is paid regularly by a municipality, and for whom law enforcement is a full-time career, but does not include any clerical, custodial, or maintenance personnel;

(9) Governing body means: (a) In a mayor and council form of government, the mayor and city council; (b) in a commission plan of government, the mayor and city council or village board of trustees; (c) in a village form of government, the village board of trustees; and (d) in a city manager plan of government, the mayor and city council;

(10) Merged commission means a civil service commission resulting from the merger of two or more commissions pursuant to section 19-1848;

(11) Municipality means all cities and villages specified in subsection (1) of section 19-1827 having full-time police officers or full-time firefighters;

(12) Position means an individual job which is designated by an official title indicative of the nature of the work; and

(13) Promotion or demotion means changing from one position to another, accompanied by a corresponding change in current rate of pay.

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; Laws 2019, LB193, § 121. Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-1827 Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.

(1) There is hereby created, in cities having a population of more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and having full-time police officers or full-time firefighters, a civil

service commission, except in cities with a population in excess of forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of Nebraska. Any city or village having a population of five thousand inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall be continued for at least four years, and thereafter continued at the option of the governing body of such city or village. The members of such commission shall be appointed by the appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city or village for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the city or village determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been made, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and

three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

Source: Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6; Laws 2017, LB113, § 31; Laws 2019, LB193, § 122.
Effective date September 1, 2019.

19-1829 Employees subject to act; appointment; promotion.

The Civil Service Act shall only apply to full-time firefighters or full-time police officers of each municipality, including any paid full-time police chief or fire chief of such department. All appointments to and promotions in such department shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to the Civil Service Act, the appointing authority shall consider factors including, but not limited to:

(1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;

(2) The knowledge, skills, and abilities of the applicant which are necessary for the position;

(3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;

(4) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(5) Required federal, state, or local certifications or licenses necessary for the position; and

(6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. No person shall be reinstated in or transferred, suspended, or discharged from any such position or employment contrary to the Civil Service Act.

Source: Laws 1943, c. 29, § 3, p. 127; R.S.1943, § 19-1803; Laws 1957, c. 48, § 3, p. 230; Laws 1969, c. 116, § 1, p. 530; R.S.1943, (1983), § 19-1803; Laws 1985, LB 372, § 8; Laws 2019, LB193, § 123.
Effective date September 1, 2019.

19-1830 Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.

(1) Immediately after the appointment of the commission, and annually thereafter, the commission shall organize by electing one of its members chairperson. The commission shall hold meetings as may be required for the proper discharge of its duties. The commission shall appoint a secretary and a

chief examiner who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. If the municipality has a personnel officer, the commission shall appoint such personnel officer as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be subject to suspension or discharge upon the vote of a majority of the appointed members of the commission.

(2) The commission shall adopt and promulgate procedural rules and regulations consistent with the Civil Service Act. Such rules and regulations shall provide in detail the manner in which examinations may be held and any other matters assigned by the appointing authority. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer.

(3) The commission shall provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons who are to be examined to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill and psychological testing.

(4) The commission shall provide, by the rules and regulations, for a credit of ten percent in favor of all applicants for an appointment under civil service who, in time of war or in any expedition of the armed forces of the United States, have served in and been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from the armed forces of the United States and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These credits shall only apply to entry-level positions as defined by the appointing authority.

(5) The commission may conduct an investigation concerning and report upon all matters regarding the enforcement and effect of the Civil Service Act and the rules and regulations prescribed. The commission may inspect all institutions, departments, positions, and employments affected by such act to determine whether such act and all such rules and regulations are being obeyed. Such investigations may be conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the city attorney or village attorney, if authorized by the appointing authority. If the city attorney or village attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, to issue subpoenas to require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the deposition of witnesses, residing within or without the state, to be

taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. The oaths administered and subpoenas issued shall have the same force and effect as the oaths administered by a district judge in a judicial capacity and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply shall be deemed a violation of the Civil Service Act and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 19-1833.

(6) The commission shall provide that all hearings and investigations before the commission, designated commissioner, or chief examiner shall be governed by the Civil Service Act and the rules of practice and procedure to be adopted by the commission. In the conduct thereof, they shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission, except that no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect unless it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation.

(7) The commission shall establish and maintain a roster of officers and employees.

(8) The commission shall provide for, establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any position and, as a result thereof, establish eligible lists for the various positions.

(9) The commission shall make recommendations concerning a reduction-in-force policy to the governing body or city manager in a city manager plan of government. The governing body or city manager in a city manager plan of government shall consider such recommendations, but shall not be bound by them in establishing a reduction-in-force policy. Prior to the adoption of a reduction-in-force policy, the governing body or, in the case of a city manager plan, the city manager and the governing body shall, after giving reasonable notice to each police officer and firefighter by first-class mail, conduct a public hearing.

(10) The governing body shall in all municipalities, except those with a city manager plan in which the city manager shall, adopt a reduction-in-force policy which shall consider factors including, but not limited to:

(a) The multiple job skills recently or currently being performed by the employee;

(b) The knowledge, skills, and abilities of the employee;

(c) The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;

(d) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(e) Required federal, state, or local certifications or licenses; and

(f) Seniority.

(11) The commission shall keep such records as may be necessary for the proper administration of the Civil Service Act.

Source: Laws 1943, c. 29, § 4, p. 127; R.S.1943, § 19-1804; Laws 1957, c. 48, § 4, p. 230; R.S.1943, (1983), § 19-1804; Laws 1985, LB 372, § 9; Laws 2005, LB 54, § 3; Laws 2019, LB193, § 124.
Effective date September 1, 2019.

19-1833 Civil service; employees; discharge; demotion; procedure; investigation; appeal.

(1) No person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed, suspended, demoted, or discharged except for cause and then only upon the written accusation of the police chief or fire chief, the appointing authority, or any citizen or taxpayer.

(2) The governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer.

(3) Any person so removed, suspended, demoted, or discharged may, within ten days after being notified by the appointing authority of such removal, suspension, demotion, or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the city attorney or village attorney if authorized by the appointing authority. If the city attorney or village attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the question of whether or not such removal, suspension, demotion, or discharge was made in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

(4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty days after filing of the written demand for an investigation and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may affirm the action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall

find that the removal, suspension, demotion, or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such person in the position or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge. The commission upon such hearing, in lieu of affirming the removal, suspension, demotion, or discharge, may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing authority.

(5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal to the district court. Such appeal shall be taken within forty-five days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify, and file such transcript with and deliver such papers to the district court. The district court shall proceed to hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court.

Source: Laws 1943, c. 29, § 8, p. 132; R.S.1943, § 19-1808; Laws 1957, c. 48, § 6, p. 234; Laws 1959, c. 65, § 2, p. 289; Laws 1969, c. 116, § 4, p. 531; R.S.1943, (1983), § 19-1808; Laws 1985, LB 372, § 12; Laws 2019, LB193, § 125.
Effective date September 1, 2019.

19-1834 Civil service; municipality provide facilities and assistance.

The municipality shall afford the commission and its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents, and accounts. All city or village officers and employees shall attend

and testify whenever required to do so by the commission, the accused, or the appointing authority.

Source: Laws 1943, c. 29, § 9, p. 133; R.S.1943, § 19-1809; R.S.1943, (1983), § 19-1809; Laws 1985, LB 372, § 13; Laws 2019, LB193, § 126.

Effective date September 1, 2019.

19-1836 Civil service; creation or elimination of positions.

All positions subject to the Civil Service Act shall be created or eliminated by the governing body of the municipality. The Civil Service Act shall not be construed to infringe upon the power and authority of (1) the governing body of the municipality to establish pursuant to section 16-310, 17-108, or 17-209 the salaries and compensation of all employees employed hereunder or (2) the city manager, pursuant to the City Manager Plan of Government Act, to establish the salaries and compensation of employees within the compensation schedule or ranges established by the governing body for the positions.

Source: Laws 1943, c. 29, § 11, p. 135; R.S.1943, § 19-1811; R.S.1943, (1983), § 19-1811; Laws 1985, LB 372, § 15; Laws 2019, LB193, § 127.

Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

19-1839 Civil service commission; conduct of litigation; representation.

It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the Civil Service Act and of the rules of the commission. The commission may be represented in such suits and all investigations pursuant to the Civil Service Act by the city attorney or village attorney if authorized by the appointing authority. If the city attorney or village attorney does not represent the commission, the commission may be represented by special counsel appointed by it in any particular case.

Source: Laws 1943, c. 29, § 14, p. 136; R.S.1943, § 19-1814; R.S.1943, (1983), § 19-1814; Laws 1985, LB 372, § 18; Laws 2019, LB193, § 128.

Effective date September 1, 2019.

19-1846 Municipality; duty to make appropriation.

It shall be the duty of each municipality subject to the Civil Service Act to appropriate each fiscal year, from the general funds of such municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the city attorney or village attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel.

Source: Laws 1943, c. 29, § 21, p. 137; R.S.1943, § 19-1821; R.S.1943, (1983), § 19-1821; Laws 1985, LB 372, § 25; Laws 2019, LB193, § 129.

Effective date September 1, 2019.

ARTICLE 21

GARBAGE DISPOSAL

(Applicable to cities of the first or second class and villages.)

Section

- 19-2101. Garbage disposal plants or systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain.
- 19-2102. Garbage disposal plants or systems and solid waste disposal areas; tax; when authorized.
- 19-2103. Garbage disposal plants or systems and solid waste disposal areas; issuance of bonds; limitation on amount.
- 19-2104. Garbage disposal plants or systems and solid waste disposal areas; tax levy.
- 19-2105. Garbage disposal plants or systems and solid waste disposal areas; contracts.
- 19-2106. Garbage disposal plant or system and solid waste disposal area; management and operation; rates and charges; collections; penalties.

19-2101 Garbage disposal plants or systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain.

Cities of the first class, cities of the second class, and villages shall have the power to purchase, construct, maintain, and improve garbage disposal plants or systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of their respective municipalities and the inhabitants thereof, and are hereby authorized and empowered to lease or to take land in fee within their corporate limits or without their corporate limits by donation, gift, devise, purchase, or appropriation for rights-of-way and for construction and operation of such a disposal plant, system, or solid waste disposal area.

Source: Laws 1947, c. 54, § 1, p. 183; Laws 1961, c. 60, § 1, p. 219; Laws 1969, c. 117, § 1, p. 533; Laws 2019, LB193, § 130.
Effective date September 1, 2019.

19-2102 Garbage disposal plants or systems and solid waste disposal areas; tax; when authorized.

The cost to purchase, construct, maintain, and improve garbage disposal plants or systems or solid waste disposal areas pursuant to section 19-2101 may be defrayed by the levy of a tax not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year or, when such tax is insufficient for such purpose, by the issuance of bonds of the city or village.

Source: Laws 1947, c. 54, § 2, p. 183; Laws 1953, c. 287, § 37, p. 952; Laws 1979, LB 187, § 83; Laws 1992, LB 719A, § 84; Laws 2019, LB193, § 131.
Effective date September 1, 2019.

19-2103 Garbage disposal plants or systems and solid waste disposal areas; issuance of bonds; limitation on amount.

The question of issuing bonds for the purpose of section 19-2102 shall be submitted to the electors at any election held for that purpose, after not less than thirty days' notice thereof shall have been given by publication in a legal newspaper published in or of general circulation in such municipality or, if no legal newspaper is in or of general circulation in such municipality, then by posting in five or more public places therein. Such bonds may be issued only

when a majority of the electors voting on the question approve their issuance. The bonds shall bear interest payable annually or semiannually and shall be payable at any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction, installation, or purchase of a garbage disposal plant or system or solid waste disposal area shall not exceed five percent of the taxable value of the property within such municipality as shown by the last annual assessment.

Source: Laws 1947, c. 54, § 3, p. 183; Laws 1969, c. 117, § 2, p. 534; Laws 1969, c. 51, § 74, p. 321; Laws 2019, LB193, § 132.
Effective date September 1, 2019.

19-2104 Garbage disposal plants or systems and solid waste disposal areas; tax levy.

In a city of the first class, city of the second class, or village which purchases, constructs, maintains, or improves garbage disposal plants or systems or solid waste disposal areas pursuant to section 19-2101, the city council or village board of trustees shall levy annually a sufficient tax to maintain and operate such plant or system or solid waste disposal area and to provide for the payment of the interest on and principal of any bonds that may have been issued as provided in section 19-2103.

Source: Laws 1947, c. 54, § 4, p. 184; Laws 1969, c. 117, § 3, p. 534; Laws 2019, LB193, § 133.
Effective date September 1, 2019.

19-2105 Garbage disposal plants or systems and solid waste disposal areas; contracts.

In a city of the first class, city of the second class, or village which purchases, constructs, maintains, or improves garbage disposal plants or systems or solid waste disposal areas pursuant to section 19-2101, the city council or village board of trustees may also make and enter into a contract or contracts with any person, firm, or corporation for the construction, maintenance, or operation of a garbage disposal plant or system or solid waste disposal area.

Source: Laws 1947, c. 54, § 5, p. 184; Laws 1969, c. 117, § 4, p. 535; Laws 2019, LB193, § 134.
Effective date September 1, 2019.

19-2106 Garbage disposal plant or system and solid waste disposal area; management and operation; rates and charges; collections; penalties.

When a garbage disposal plant or system or solid waste disposal area shall have been established pursuant to section 19-2101, the municipality may provide by ordinance for the management and operation thereof, the rates to be charged for such service, including collection and disposal, and the manner of payment and collection thereof, prescribe penalties for the violation of such ordinance, and do whatever is necessary to protect the general health in the matter of removal and disposal of garbage.

Source: Laws 1947, c. 54, § 6, p. 184; Laws 1972, LB 893, § 1; Laws 2019, LB193, § 135.
Effective date September 1, 2019.

ARTICLE 22

**CORRECTION OF CORPORATE LIMITS
(Applicable to cities of the first or second class and villages.)**

Section

- 19-2201. Error in platting; corporate limits; city council or village board of trustees; resolution; contents.
19-2202. Error in platting; application; district court; contents.
19-2203. Error in platting; application; order to show cause; contents; publication.

19-2201 Error in platting; corporate limits; city council or village board of trustees; resolution; contents.

When any part of a city of the first class, city of the second class, or village shall have been platted (1) the plat having been recorded with the register of deeds of the proper county for more than ten years; (2) the streets and alleys having been dedicated to the public and such city or village having accepted such dedication by maintenance and use of such streets and alleys, and the inhabitants of that part of such city or village having been subject to taxation including the levy of such city or village and having had the right of franchise in all the elections of such city or village for a period of more than ten years; and (3) such part of such city or village is contiguous and adjacent to such corporate city or village or a properly annexed addition thereto; but, when there is error in the platting thereof or the proceeding to annex the part of such city or village which renders the annexation ineffectual or where there is a total lack of an attempted annexation of record, the city council or village board of trustees of such city or village may by resolution correct the corporate limits, if adopted by a two-thirds vote of all members of such city council or village board of trustees. The resolution shall describe the part of such city or village in general terms and direct the proper officers of the city or village to make application to the district court of the county in which such territory lies for the correction and reestablishment of the corporate limits of such city or village. The resolution, and the vote thereon, shall be recorded in the minutes of the city council or village board of trustees.

Source: Laws 1955, c. 60, § 1, p. 190; Laws 2019, LB193, § 136.
Effective date September 1, 2019.

19-2202 Error in platting; application; district court; contents.

The application presented pursuant to section 19-2201 to the district court of the county in which the territory lies shall: (1) Contain a recital of the resolution of the city council or village board of trustees for correction and reestablishment of the corporate limits and the vote thereon; (2) set forth the name of the plat or plats, the date of record, the book and page of the record book in which such plat or plats have been recorded, and the book and page of the record in which the original charter and annexations, if any there be, are recorded; (3) describe in general terms the area contained within the corporate limits and the territory affected by the corrections and reestablishment sought; (4) set forth the streets and alleys of such area which are maintained or used; and (5) be supported by exhibits consisting of a certificate of the county treasurer of the county in which the territory lies showing the years for which the real estate and the property therein situated shall have been subject to the tax levy of such city or village and a certificate of the city clerk or village clerk

or other officer having custody of the sign-in registers for elections of the city or village in which the territory lies showing the years during which the inhabitants thereof enjoyed the right of franchise in the elections of such city or village. The application shall pray for an order of the district court correcting and reestablishing the corporate limits of the city or village to include such territory.

Source: Laws 1955, c. 60, § 2, p. 190; Laws 1997, LB 764, § 3; Laws 2019, LB193, § 137.
Effective date September 1, 2019.

19-2203 Error in platting; application; order to show cause; contents; publication.

If it shall appear to the judge of the district court that the application presented pursuant to section 19-2201 is properly filed, he or she shall make an order directing all persons owning real estate or having an interest in real estate situated in such part of such city or village, giving the name of the plat as recorded as well as a general description of the territory affected by the proposed correction and reestablishment of corporate limits, to appear before him or her at a time and place to be specified, not less than four and not more than ten weeks from the time of making such order, to show cause why a decree correcting and reestablishing the corporate limits of such city or village should not be entered. The notice of such order to show cause shall be made by publication in a legal newspaper in or of general circulation in such city or village. If there is no legal newspaper in or of general circulation in such city or village, then such notice shall be published in some legal newspaper in or of general circulation in the county in which such city or village is located. The notice shall be published four consecutive weeks in such legal newspaper and shall contain a summary statement of the object and prayer of the application, mention the court where it is filed, and notify the persons interested when they are required to appear and show cause why such decree should not be entered.

Source: Laws 1955, c. 60, § 3, p. 191; Laws 1986, LB 960, § 15; Laws 2019, LB193, § 138.
Effective date September 1, 2019.

ARTICLE 23

PARKING METERS

(Applicable to cities of the first or second class and villages.)

Section

19-2302. Revenue; disposition.

19-2303. Terms, defined.

19-2304. Regulation and control of parking vehicles; other means.

19-2302 Revenue; disposition.

The proceeds derived from the use of the parking meters or other similar mechanical devices, established pursuant to sections 19-2301 to 19-2304, shall be placed in the traffic and safety fund and shall be used by such city or village referred to in section 19-2301 (1) for the purpose of the acquisition, establishment, erection, maintenance, and operation of the system, (2) for the purpose of making the system effective, and (3) for the expenses incurred by and throughout such city or village in the regulation and limitation of vehicular parking,

traffic relating to parking, traffic safety devices, signs, signals, markings, policing, lights, traffic surveys, and safety programs.

Source: Laws 1955, c. 61, § 2, p. 193; Laws 2019, LB193, § 139.
Effective date September 1, 2019.

19-2303 Terms, defined.

As used in sections 19-2301 to 19-2304, unless the context otherwise requires: Proceeds shall mean any money collected from or by reason of parking meters or other similar mechanical devices installed by any city of the first class, city of the second class, or village, including revenue received by reason of any schedule of accelerated charges, to be fixed by ordinance. Accelerated charges may include, but need not be limited to, charges fixed by ordinance for parking in controlled or regulated areas without payment in advance of required parking fees or payments, but shall not include judicially imposed fines and penalties.

Source: Laws 1955, c. 61, § 3, p. 193; Laws 2019, LB193, § 140.
Effective date September 1, 2019.

19-2304 Regulation and control of parking vehicles; other means.

Nothing contained in sections 19-2301 to 19-2304 shall prohibit the governing body of any city of the first class, city of the second class, or village from employing any and all other ways and means to regulate and control vehicular parking in such city or village either in conjunction with a system of meters or devices or exclusive and independent thereof.

Source: Laws 1955, c. 61, § 4, p. 193; Laws 2019, LB193, § 141.
Effective date September 1, 2019.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section

- 19-2401. Municipal improvements; combination of projects; notice; allocation of cost.
- 19-2402. Water service; sanitary sewer service; extension districts; ordinance; contents.
- 19-2403. Water service; sanitary sewer service; extension districts; connection compelled; penalty; assessments.
- 19-2404. Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.
- 19-2405. Water service; sanitary sewer service; extension districts; bonds; interest; issuance.
- 19-2406. Water service; sanitary sewer service; extension districts; warrants; interest; issuance; contractor; interest.
- 19-2407. Water service; sanitary sewer service; extension districts; special assessments; levy; collection.
- 19-2410. Combined improvements; petition; contents; authority of city council or village board of trustees.
- 19-2411. Combined improvements; district; creation; notice; objections.
- 19-2412. Combined improvements; contract; bids; warrants; payment; interest.
- 19-2413. Combined improvements; acceptance; special assessments; levy; maturity.
- 19-2414. Combined improvements; acceptance; bonds; interest; issuance; maturity; proceeds; disposition.
- 19-2416. Limited street improvement district; creation; purpose; ordinance; notice; procedure.
- 19-2417. Sidewalks; construct, replace, repair; districts; contract.

§ 19-2401**CITIES AND VILLAGES; PARTICULAR CLASSES**

Section

- 19-2418. Sidewalks; construct, replace, repair; districts; special assessments; payment.
- 19-2419. Sidewalks; construct, replace, repair; districts; bonds; general obligation; interest; payment.
- 19-2420. Sewage and water facilities; acquire by gift or purchase from federal government; rates.
- 19-2421. Leases authorized; term; option to purchase.
- 19-2422. Special assessment; appeal; district court; powers; tried de novo.
- 19-2423. Special assessment; notice of appeal; time; bond; costs.
- 19-2424. City clerk or village clerk; prepare transcript; cost; indigent appellant.
- 19-2425. Special assessment; file petition on appeal and transcript with district court; time.
- 19-2426. Irrigation or drainage ditch, canal, or lateral; wall, enclose, or cover; procedure.
- 19-2427. Improvement district; adjacent land; how treated; special assessments.
- 19-2428. Improvement district; land within agricultural use zone; how treated.
- 19-2429. Agricultural land within improvement district; deferral of special assessment; procedure.
- 19-2430. Agricultural land within improvement district; deferral of special assessment; termination; when.
- 19-2432. Special assessment; division or subdivision of land; reapportionment; procedure; notice; hearing; aggrieved owner; appeal; city council or village board of trustees; duties.

19-2401 Municipal improvements; combination of projects; notice; allocation of cost.

(1) Any city of the first class, city of the second class, or village, when constructing any municipal improvement or public works, may combine two or more similar pending projects although authorized by separate ordinances and located in separate improvement districts for the purpose of advertising for bids for the construction of such projects and for the further purpose of awarding one contract for the construction of such two or more similar pending projects.

(2) The published notice may set forth the engineer's lump-sum estimate of the total cost for the aggregate of all work to be performed in the combined districts and shall (a) enumerate the estimated quantities of work to be done in each separate district; and (b) call for an aggregate bid on all work to be performed in the combined districts, broken down in such a manner as will accurately reflect unit prices for such estimated quantities, so that, notwithstanding that such a submitted aggregate or alternate aggregate bid may be accepted, the actual cost of the construction of each of such projects may be allocated by any such city or village to the improvement district in which it is located for the purpose of levying any authorized special assessments to defray, in whole or in part, such cost of construction of such projects.

(3) Any such city or village may also request alternate aggregate bids for such projects.

Source: Laws 1957, c. 50, § 1, p. 239; Laws 1963, c. 94, § 1, p. 318; Laws 1969, c. 118, § 1, p. 535; Laws 2019, LB193, § 142.
Effective date September 1, 2019.

19-2402 Water service; sanitary sewer service; extension districts; ordinance; contents.

(1) Whenever the city council of any city of the first class or city of the second class or the village board of trustees of a village deems it necessary and advisable to extend municipal water service or municipal sanitary sewer service

to territory beyond the existing systems, such municipal officials may, by ordinance, create a district or districts to be known as sanitary sewer extension districts or water extension districts for such purposes, and such district or districts may include properties within the corporate limits of the municipality and the extraterritorial zoning jurisdiction as established pursuant to section 16-901 or 17-1002.

(2) The owners of lots and lands abutting upon a street, avenue, or alley, or part thereof, may petition the city council or village board of trustees to create a sanitary sewer extension district or a water extension district. The petition shall be signed by owners representing at least two-thirds of the front footage abutting upon the street, avenue, or alley, or part thereof, within the proposed district, which will become subject to an assessment for the cost of the improvement.

(3) If creation of such district is not initiated by petition, a vote of at least three-fourths of all the members of the city council or village board of trustees shall be required to adopt the ordinance creating the district.

(4) Such ordinance shall state the size and kind of sewer mains or water mains proposed to be constructed in such district and shall designate the location and terminal points thereof. Such ordinance shall also refer to the plans and specifications for such utility extensions which shall have been made and filed with the city clerk or village clerk by the city engineer or village engineer prior to the introduction of the ordinance, and the city engineer or village engineer at the time of filing such plans and specifications shall make and file an estimate of the total cost of the proposed utility extension. The ordinance shall also state the outer boundaries of the district or districts in which it is proposed to make special assessments.

(5) Upon creation of an extension district, whether by vote of the governing body or by petition, the city council or village board of trustees shall order the sewer extension main or water extension main laid and, to the extent of special benefit, assess the cost thereof against the property which abuts upon the street, avenue, or alley, or part thereof, which is located in the district.

Source: Laws 1961, c. 63, § 1, p. 247; Laws 2001, LB 222, § 3; Laws 2002, LB 649, § 1; Laws 2016, LB704, § 211; Laws 2019, LB193, § 143.

Effective date September 1, 2019.

19-2403 Water service; sanitary sewer service; extension districts; connection compelled; penalty; assessments.

(1) When the extension of the sewer or water service involved in an extension district created pursuant to section 19-2402 is completed, the municipality shall compel all proper connections of occupied properties in the district with the extension and may provide a penalty for failure to comply with regulations of the municipality pertaining to the district.

(2) In case any property owner neglects or fails, for ten days after notice, either by personal service or by publication in a legal newspaper in or of general circulation in the municipality, to comply with municipal regulations pertaining to municipal water service or municipal sanitary service extensions or to make connections of his or her property with such utility service, the city council or village board of trustees may cause the same to be done, assess the

cost thereof against the property, and collect the same in the manner provided for the collection of general municipal taxes.

Source: Laws 1961, c. 63, § 2, p. 248; Laws 1969, c. 51, § 75, p. 321; Laws 2002, LB 649, § 2; Laws 2019, LB193, § 144.
Effective date September 1, 2019.

19-2404 Sanitary sewer extension mains; water extension mains; special assessments; maturity; interest; rate.

(1) Except as provided in subsection (2) of this section, special assessments for sanitary sewer extension mains or water extension mains in a district shall be levied at one time and shall become delinquent in equal annual installments over a period of years equal to the number of years for which the bonds for such project were issued pursuant to section 19-2405. The first installment becomes delinquent fifty days after the making of such levy. Subsequent installments become delinquent on the anniversary date of the levy. Each installment, except the first, shall draw interest at the rate set by the city council or village board of trustees from the time of such levy until such installment becomes delinquent. After an installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon until such installment is collected and paid. Such special assessments shall be collected and enforced as in the case of general municipal taxes and shall be a lien on such real estate from and after the date of the levy. If three or more of such installments become delinquent and unpaid on the same property, the city council or the village board of trustees may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon the date fixed. A copy of such resolution shall be published one time in a legal newspaper in or of general circulation in the city or village. After the fixed date such future installments shall be deemed to be delinquent and the city or village may proceed to enforce and collect the total amount due including all future installments.

(2) If the city or village incurs no new indebtedness pursuant to section 19-2405 for any water service extension or sanitary sewer extension in a district, the special assessments for such improvements shall be levied at one time and shall become delinquent in equal annual installments over such period of years as the city council or village board of trustees determines at the time of making the levy to be reasonable and fair.

Source: Laws 1961, c. 63, § 3, p. 249; Laws 1969, c. 51, § 76, p. 322; Laws 1980, LB 655, § 1; Laws 1980, LB 933, § 23; Laws 1981, LB 167, § 24; Laws 1986, LB 960, § 16; Laws 2005, LB 161, § 9; Laws 2015, LB361, § 43; Laws 2019, LB193, § 145.
Effective date September 1, 2019.

19-2405 Water service; sanitary sewer service; extension districts; bonds; interest; issuance.

For the purpose of paying the cost of any water service extension or sanitary sewer service extension, in an extension district created pursuant to section 19-2402, the city council or village board of trustees may, by ordinance, cause

bonds of the municipality to be issued, called district water service extension bonds of district No. . . . or district sanitary sewer service extension bonds of district No. . . . , payable in not exceeding twenty years from date and to bear interest payable annually or semiannually with interest coupons attached. The ordinance effectuating the issuance of such bonds shall provide that the special tax and assessments shall constitute a sinking fund for the payment of such bonds and interest. If a written protest, signed by owners of the property located in the improvement district and representing a majority of the front footage which may become subject to assessment for the cost of the improvement, is filed with the city clerk or village clerk within three days before the date of the meeting for the consideration of such ordinance, such ordinance shall not be passed. The entire cost of such water extension mains or sanitary sewer extension mains in any such street, avenue, or alley may be chargeable to the private property therein and may be paid by the owner of such property within fifty days from the levy of such special taxes and assessments, and thereupon such property shall be exempt from any lien for the special taxes and assessments. The bonds shall not be sold for less than their par value. If the assessment or any part thereof fails or for any reason is invalid, the city council or village board of trustees may, without further notice, make such other and further assessments on the lots and lands as may be required to collect from the lots and lands the cost of the improvement, properly chargeable as provided in this section. In lieu of such general obligation bonds, the municipality may issue revenue bonds as provided in section 18-502, to pay all or part of the cost of the construction of such improvement.

Source: Laws 1961, c. 63, § 4, p. 249; Laws 1969, c. 51, § 77, p. 323; Laws 2005, LB 161, § 10; Laws 2019, LB193, § 146.
Effective date September 1, 2019.

19-2406 Water service; sanitary sewer service; extension districts; warrants; interest; issuance; contractor; interest.

For the purpose of making partial payments as the work progresses in an extension district created pursuant to section 19-2402, warrants may be issued by the mayor and city council or the chairperson and village board of trustees, as the case may be, upon certificates of the engineer in charge showing the amount of work completed and materials necessarily purchased and delivered for the orderly and proper continuation of the project, in a sum not exceeding ninety-five percent of the cost thereof and upon the completion and acceptance of the work issue a final warrant for the balance due the contractor, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold as provided in section 19-2405, and which shall bear interest at such rate as the mayor and city council or chairperson and village board of trustees shall order. The city or village shall pay to the contractor interest at the rate of eight percent per annum on the amounts due on partial and final payments beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council or village board of trustees, and running until the date that the warrant is tendered to the contractor. Such warrants shall be registered in the manner provided for the registration of other warrants and called and paid whenever there are funds available for that purpose in the manner provided for the calling and paying of other warrants. For the purpose of paying such warrants and the interest thereon from the time of their registration until paid, the special assessments as provided in section

19-2404 shall be kept as they are paid and collected in a fund to be designated as the sewer and water service extension fund.

Source: Laws 1961, c. 63, § 5, p. 250; Laws 1969, c. 51, § 78, p. 323; Laws 1974, LB 636, § 7; Laws 2019, LB193, § 147.

Effective date September 1, 2019.

19-2407 Water service; sanitary sewer service; extension districts; special assessments; levy; collection.

Special assessments may be levied by the mayor and city council or chairperson and village board of trustees for the purpose of paying the cost of constructing extension water mains or sanitary service connections, as provided in sections 19-2402 to 19-2407. Such assessments shall be levied on the real property lying and being within the utility main district in which such extension mains may be situated to the extent of benefits to such property by reason of such improvement. The benefits to such property shall be determined by the mayor and city council or chairperson and village board of trustees, sitting as a board of equalization after notice to property owners, as provided in other cases of special assessment. After the mayor and city council or chairperson and village board of trustees, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be made according to the front footage of the lots or real estate within such utility district, or according to such other rule as the board of equalization may adopt for the distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement. All such special assessments shall be collected in the same manner as general municipal taxes and shall be subject to the same penalty.

Source: Laws 1961, c. 63, § 6, p. 250; Laws 2015, LB361, § 44; Laws 2019, LB193, § 148.

Effective date September 1, 2019.

19-2410 Combined improvements; petition; contents; authority of city council or village board of trustees.

Whenever a petition, signed by sixty percent of the owners of all real property in a proposed improvement district, is presented to the city council or village board of trustees setting forth (1) the property to be included in the improvement district, (2) the improvement or improvements authorized by the Combined Improvement Act which they desire made in such district in reasonable detail and stating the location of each, and (3) an estimate of the cost of the improvement or improvements, which estimate does not exceed the dollar limitations in section 19-2408, the city council or village board of trustees shall cause the petition to be examined and the estimate of cost of the improvement or improvements verified. If the petition is found correct, the city council or village board of trustees shall by ordinance create an improvement district consecutively numbered, known as Improvement District No., and cause the improvements to be made if such can be done within such dollar limitations.

Source: Laws 1961, c. 64, § 3, p. 252; Laws 2003, LB 52, § 4; Laws 2019, LB193, § 149.

Effective date September 1, 2019.

19-2411 Combined improvements; district; creation; notice; objections.

The city council or village board of trustees may without petition create an improvement district and cause one or more of the improvements specified in section 19-2409 to be made in such district. The ordinance shall designate the property included within the district or the outer boundaries thereof, the improvement or improvements to be made in the district, and the total estimated cost of the improvements, which shall not exceed the dollar limitations in section 19-2408. After passage, approval, and publication of the ordinance, the city clerk or village clerk shall cause notice of the creation of such district to be published for two consecutive weeks in a legal newspaper in or of general circulation in the city or village, or in lieu of publication cause such notice to be served personally or by certified mail on all owners of real property located within the district. If a majority of the owners of all the real property in the district file written objections to the creation of the district with the city clerk or village clerk within twenty days after the first publication of such notice or within twenty days after the date of mailing or service of written notice on the property owners in the district, the city or village shall not proceed further and shall repeal such ordinance. If no such objections are filed, the city shall proceed with making the improvements.

Source: Laws 1961, c. 64, § 4, p. 253; Laws 2003, LB 52, § 5; Laws 2019, LB193, § 150.
Effective date September 1, 2019.

19-2412 Combined improvements; contract; bids; warrants; payment; interest.

Contracts for improvements made under the Combined Improvement Act shall be let and the improvements made in the same manner as required for street improvements. The city council or village board of trustees may direct the improvements to be made under a single contract or that separate bids be taken for the street improvement, installation of water mains, and installation of sewers, but the aggregate of such contracts shall not exceed the estimate as shown in the ordinance creating the district. For the purpose of making partial payment as the work progresses, warrants may be issued by the mayor and city council or the village board of trustees upon certificate of the engineer in charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project in an amount not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid from the amounts received on the special assessments or from the sale of bonds issued to pay the cost of the project as provided in section 19-2414. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council or village board of trustees and running until the date that the warrant is tendered to the contractor.

Source: Laws 1961, c. 64, § 5, p. 254; Laws 1975, LB 112, § 4; Laws 2019, LB193, § 151.
Effective date September 1, 2019.

19-2413 Combined improvements; acceptance; special assessments; levy; maturity.

On the completion and acceptance of the improvement or improvements made under the Combined Improvement Act, the mayor and city council or the village board of trustees may cause special assessments to be levied against the property in the district specially benefited by the improvement or improvements to the extent that such property is specially benefited in the manner and form provided for levying special assessments for street improvements under the provisions of sections 16-617 to 16-655 or 17-509 to 17-515, and the special assessments shall mature and bear interest the same as provided for special assessments for paving.

Source: Laws 1961, c. 64, § 6, p. 254; Laws 2019, LB193, § 152.
Effective date September 1, 2019.

19-2414 Combined improvements; acceptance; bonds; interest; issuance; maturity; proceeds; disposition.

After the completion and acceptance of the improvement or improvements made under the Combined Improvement Act, the city or village may issue and sell its negotiable coupon bonds to be known as public improvement bonds in an amount not exceeding the balance of the unpaid cost of the improvement or improvements. The bonds shall be payable in not to exceed twenty years from date and bear interest payable annually or semiannually. All money collected from the special assessments shall be placed in a sinking fund to pay the cost of the improvement or improvements and the bonds issued under the Combined Improvement Act.

Source: Laws 1961, c. 64, § 7, p. 254; Laws 1969, c. 51, § 79, p. 324; Laws 2003, LB 52, § 6; Laws 2019, LB193, § 153.
Effective date September 1, 2019.

19-2416 Limited street improvement district; creation; purpose; ordinance; notice; procedure.

The governing body of any city of the first class, city of the second class, or village may by ordinance create a limited street improvement district for the sole purpose of grading, curbing, and guttering any unpaved street or streets or curbing and guttering any paved or unpaved street or streets in the city or village and each district shall be designated as Street Grading, Curbing, and Guttering District No. or as Curbing and Guttering District No., as the case may be. The city clerk or village clerk shall, after the passage, approval, and publication of such ordinance, publish notice of the creation of any such district or districts one time each week for three weeks in a legal newspaper in or of general circulation in the city or village. After the passage, approval, and publication of such ordinance and the publication of such notice, the procedure of the mayor and city council or chairperson and village board of trustees in reference to such improvement shall be in accordance with the applicable provisions of sections 16-620 to 16-655 or 17-508 to 17-520.

Source: Laws 1961, c. 65, § 1, p. 255; Laws 1963, c. 89, § 8, p. 306; Laws 1965, c. 56, § 2, p. 263; Laws 2019, LB193, § 154.
Effective date September 1, 2019.

19-2417 Sidewalks; construct, replace, repair; districts; contract.

The mayor and city council of any city of the first class or city of the second class or the village board of trustees of any village shall have the power to

construct, replace, repair, or otherwise improve sidewalks within such city or village. Whenever the mayor and city council or village board of trustees shall by resolution passed by a three-fourths vote of all members of such city council or village board of trustees determine the necessity for sidewalk improvements, the mayor and city council or village board of trustees shall by ordinance create a sidewalk district, shall cause such improvements to be made, and shall contract therefor.

Source: Laws 1965, c. 80, § 1, p. 316; Laws 2019, LB193, § 155.
Effective date September 1, 2019.

19-2418 Sidewalks; construct, replace, repair; districts; special assessments; payment.

The mayor and city council or village board of trustees shall levy special assessments on the lots and parcels of land abutting on or adjacent to the sidewalk improvements specially benefited thereby in any sidewalk district created pursuant to section 19-2417 in proportion to the benefits to pay the cost of such improvements. All special assessments shall be a lien on the property on which levied from the date of the levy until paid. The special assessment for the sidewalk improvement shall be levied at one time and shall become delinquent as follows: One-seventh of the total assessment shall become delinquent in ten days after such levy; one-seventh in one year; one-seventh in two years; one-seventh in three years; one-seventh in four years; one-seventh in five years; and one-seventh in six years. Each of such installments, except the first, shall draw interest at the rate of not exceeding the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the time of the levy until the installment becomes delinquent. If the installment becomes delinquent, interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid thereon as in the case of other special assessments. All such special assessments shall be made and collected in accordance with the procedure established for paving assessments for such city or village.

Source: Laws 1965, c. 80, § 2, p. 316; Laws 1980, LB 933, § 24; Laws 1981, LB 167, § 25; Laws 2015, LB361, § 45; Laws 2019, LB193, § 156.
Effective date September 1, 2019.

19-2419 Sidewalks; construct, replace, repair; districts; bonds; general obligation; interest; payment.

For the purpose of paying the cost of sidewalk improvements in any sidewalk district created pursuant to section 19-2417, the mayor and city council or village board of trustees shall have the power and may, by ordinance, cause to be issued bonds of the city or village, to be called Sidewalk Bonds of District No., payable in not exceeding six years from date, and to bear interest annually or semiannually, with interest coupons attached. Such bonds shall be general obligations of the city or village, with principal and interest payable from a fund made up of the special assessments collected and supplemented by transfers from the general fund to make up any deficiency in the collection of the special assessments. For the purpose of making partial payments as the work progresses, warrants bearing interest may be issued by the mayor and city council, or the village board of trustees, upon certificate of the engineer in

charge showing the amount of the work completed and materials necessarily purchased and delivered for the orderly and proper continuance of the project, in a sum not exceeding ninety-five percent of the cost thereof, which warrants shall be redeemed and paid upon the sale of the bonds issued and sold. The city or village shall pay to the contractor interest, at the rate of eight percent per annum on the amounts due on partial and final payments, beginning forty-five days after the certification of the amounts due by the engineer in charge and approval by the city council or village board of trustees and running until the date that the warrant is tendered to the contractor.

Source: Laws 1965, c. 80, § 3, p. 317; Laws 1969, c. 51, § 80, p. 324; Laws 1975, LB 112, § 5; Laws 2019, LB193, § 157.
Effective date September 1, 2019.

19-2420 Sewage and water facilities; acquire by gift or purchase from federal government; rates.

A city of the first class or city of the second class may acquire by gift or purchase from the federal government or any agency thereof sewer lines and sewage disposal systems, waterworks, and water distribution systems, whether within or without the corporate limits, and operate and extend the same, even though such system or systems are or may be and continue to be wholly disconnected and separate from any such utility system already belonging to such city, when, in the judgment of the mayor and city council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to such city to do so. For the purpose of acquiring, maintaining, operating, and extending any such system, any such city may use funds from any sewer, water, or electrical system presently owned and operated by it, without prior appropriation of such funds, and any other funds lawfully available for such purpose.

Rates charged for the use of any system or works acquired under this section shall be reasonable and based on cost properly allocable to the customers of such system.

Source: Laws 1967, c. 88, § 1, p. 277; Laws 2019, LB193, § 158.
Effective date September 1, 2019.

19-2421 Leases authorized; term; option to purchase.

The mayor and city council of any city of the first class or city of the second class, and the chairperson and village board of trustees of any village, in addition to other powers granted by law, may enter into contracts for lease of real or personal property for any purpose for which the city or village is authorized by law to purchase property or construct improvements. Such leases shall not be restricted to a single year and may provide for the purchase of the property in installment payments.

Source: Laws 1969, c. 110, § 1, p. 518; Laws 2019, LB193, § 159.
Effective date September 1, 2019.

19-2422 Special assessment; appeal; district court; powers; tried de novo.

Any owner of real property who feels aggrieved by the levy of any special assessment by any city of the first class, city of the second class, or village may appeal from such assessment, both as to the validity and amount thereof, to the district court of the county where such assessed real property is located. The

issues on such appeal shall be tried de novo. The district court may affirm, modify, or vacate the special assessment or may remand the case to the local board of equalization for rehearing.

Source: Laws 1975, LB 468, § 1; Laws 2019, LB193, § 160.
Effective date September 1, 2019.

19-2423 Special assessment; notice of appeal; time; bond; costs.

The owner appealing a special assessment pursuant to section 19-2422 shall, within ten days from the levy of such special assessment, file a notice of appeal with the city clerk or village clerk and shall post a bond in the amount of two hundred dollars conditioned that such appeal shall be prosecuted without delay and the appellant shall pay all costs charged against him or her.

Source: Laws 1975, LB 468, § 2; Laws 2019, LB193, § 161.
Effective date September 1, 2019.

19-2424 City clerk or village clerk; prepare transcript; cost; indigent appellant.

(1) Upon the request of the owner appealing a special assessment pursuant to section 19-2422 and the payment by him or her of the estimated cost of preparation of the transcript to the city clerk or village clerk or such clerk's designee, the city clerk 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; Laws 2019, LB193, § 162.
Effective date September 1, 2019.

19-2425 Special assessment; file petition on appeal and transcript with district court; time.

The owner appealing a special assessment pursuant to section 19-2422 shall file his or her petition on appeal in the district court, together with a transcript

of the proceedings before the city or village, within thirty days from the date of the levy of such special assessment.

Source: Laws 1975, LB 468, § 4; Laws 2019, LB193, § 163.
Effective date September 1, 2019.

19-2426 Irrigation or drainage ditch, canal, or lateral; wall, enclose, or cover; procedure.

Any city of the first class, city of the second class, or village may wall, enclose, or cover in a manner that will not restrict or impair the intended purpose, function, or operation of a segment of any irrigation or drainage ditch, canal, or lateral, whether on public or private property, which lies within the corporate limits of such city or village, and for this purpose may acquire and hold land or an interest in land. Nothing in this section shall be construed to authorize the taking of property without payment of compensation when required by law. Such city or village may undertake and finance a project authorized by this section either independently or jointly with any person owning or operating such irrigation ditch, canal, or lateral. If such project is undertaken independently, the owner or operator of such irrigation ditch, canal, or lateral shall approve the design of the project prior to any construction.

Source: Laws 1979, LB 13, § 1; Laws 2019, LB193, § 164.
Effective date September 1, 2019.

19-2427 Improvement district; adjacent land; how treated; special assessments.

Any city of the first class, city of the second class, or village may include land adjacent to such city or village when creating an improvement district, such as a sewer, paving, water, water extension, or sanitary sewer extension district. The city council or village board of trustees may levy a special assessment for the costs of such improvements upon the properties found specially benefited thereby, except as provided in sections 19-2428 to 19-2431.

Source: Laws 1979, LB 136, § 4; Laws 1983, LB 94, § 4; Laws 1987, LB 679, § 1; Laws 2015, LB361, § 46; Laws 2019, LB193, § 165.
Effective date September 1, 2019.

19-2428 Improvement district; land within agricultural use zone; how treated.

(1) Whenever the city council of a city of the first class or city of the second class or the village board of trustees of a village creates an improvement district as specified in section 19-2427 which includes land adjacent to such city or village and such adjacent land is within an agricultural use zone and is used exclusively for agricultural use, the owners of record title of such adjacent land may apply for a deferral from special assessments pursuant to sections 19-2428 to 19-2431.

(2) For purposes of sections 19-2428 to 19-2431:

(a) Agricultural use means the use of land as described in section 77-1359, so that incidental use of the land for nonagricultural or nonhorticultural purposes shall not disqualify the land; and

(b) Agricultural use zone means designation of any land predominantly for agricultural or horticultural use by any political subdivision pursuant to sections 19-925 to 19-933, Chapter 14, article 4, Chapter 15, article 9, Chapter 16, article 9, Chapter 17, article 10, or Chapter 23, article 1. The primary objective of the agricultural use zoning shall be to preserve and protect agricultural activities and the potential for the agricultural, horticultural, or open use of land. Uses to be allowed on such lands include primarily agricultural-related or horticultural-related uses, and nonagricultural or nonhorticultural industrial, commercial, or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective.

Source: Laws 1983, LB 94, § 5; Laws 1987, LB 679, § 2; Laws 2006, LB 808, § 5; Laws 2019, LB193, § 166.
Effective date September 1, 2019.

19-2429 Agricultural land within improvement district; deferral of special assessment; procedure.

(1) Any owner of record title eligible for the deferral granted by section 19-2428 shall, to secure such assessment, make application to the city council of any city of the first class or city of the second class or the village board of trustees of any village within ninety days after creation of an improvement district as specified in section 19-2427 which includes land adjacent to such city or village which is within an agricultural use zone and is used exclusively for agricultural use.

(2) Any owner of record title who makes application for the deferral provided by sections 19-2428 to 19-2431 shall notify the county register of deeds of such application in writing prior to approval by the city council or village board of trustees.

(3) The city council or village board of trustees shall approve the application of any owner of record title upon determination that (a) the property is within an agricultural use zone and is used exclusively for agricultural use and (b) the owner has complied with subsection (2) of this section.

Source: Laws 1983, LB 94, § 6; Laws 1987, LB 679, § 3; Laws 2019, LB193, § 167.
Effective date September 1, 2019.

19-2430 Agricultural land within improvement district; deferral of special assessment; termination; when.

The deferral provided for in sections 19-2428 to 19-2431 shall be terminated upon any of the following events:

(1) Notification by the owner of record title to the city council or village board of trustees to remove such deferral;

(2) Sale or transfer to a new owner who does not make a new application within sixty days of the sale or transfer, except as provided in subdivision (3) of this section;

(3) Transfer by reason of death of a former owner to a new owner who does not make application within one hundred twenty-five days of the transfer;

(4) The land is no longer being used as agricultural land; or

(5) Change of zoning to other than an agricultural zone.

Source: Laws 1983, LB 94, § 7; Laws 2019, LB193, § 168.
Effective date September 1, 2019.

19-2432 Special assessment; division or subdivision of land; reapportionment; procedure; notice; hearing; aggrieved owner; appeal; city council or village board of trustees; duties.

(1) Whenever a tract of land against which a special assessment has been levied is divided or subdivided by any platting, replatting, or other form of division creating separate lots or tracts, the city council of any city of the first class or city of the second class or the village board of trustees of any village which has levied such special assessments may (a) on application of the owner of any part of the tract or (b) on its own motion, determine the apportionment of such special assessment remaining unpaid among the various lots and parcels in the tract resulting from the division or subdivision. Any such reapportionment shall be on such fair and equitable terms as the city council or village board of trustees shall determine after notice and hearing on the reapportionment. No reapportionment of a special assessment shall be done on a tract of land if a tax sale certificate has been issued for such tract or if the special assessment being reapportioned is delinquent.

(2) Notice of hearing on the reapportionment shall be given by publication one time in a legal newspaper in or of general circulation in the city or village not less than ten days prior to the hearing. Notice of the hearing shall be sent by mail to the owners of record title of each lot or parcel affected by any proposed or determined reapportionment in the same manner as is required under section 25-520.01.

(3) In making the determination as to reapportionment, the city council or village board of trustees shall take into consideration its own requirements as to security for payment of the amounts owing and may, if determined appropriate, allocate based upon either front footage or square footage or other such method or reapportionment as may be determined appropriate based upon the facts and circumstances. No such reapportionment shall result in a reduction or remittance of the total amount originally assessed and then remaining outstanding and unpaid. Notice of the reapportionment when determined shall be sent by mail to the owners of record title of each lot or parcel affected by the reapportionment.

(4) Any notice required under this section may be waived in writing by any owner of any lot or parcel affected by any reapportionment.

(5) Any owner of real property who feels aggrieved by the reapportionment of any special assessment under this section may appeal such reapportionment in the same manner as applies for appeals from special assessments under sections 19-2422 to 19-2425, but only matters related to such reapportionment shall be considered upon any such appeal.

(6) The city council or village board of trustees shall file notice of any reapportionment of a special assessment with the county treasurer of the county where the lot or parcel is located.

Source: Laws 2011, LB309, § 1; Laws 2019, LB193, § 169.
Effective date September 1, 2019.

ARTICLE 27
PUBLIC UTILITY SERVICE

(a) CONTRACTS
(Applicable to cities of the first or second class.)

Section

19-2701. Public utilities; service outside city; authorization; limitation on length of contracts.

(a) CONTRACTS
(Applicable to cities of the first or second class.)

19-2701 Public utilities; service outside city; authorization; limitation on length of contracts.

A city of the first class or city of the second class may enter into a contract or contracts to sell electric, water, or sewer service to persons beyond the corporate limits of such city when, in the judgment of the mayor and city council of such a city not having a board of public works or of its board of public works in such a city having such board, it is beneficial to such city to do so. No such contract shall run for a period in excess of twenty-five years. Such city is hereby authorized and empowered to enter into contracts for the furnishing of electric service to persons, firms, associations, and corporations beyond the corporate limits of such city.

Source: Laws 1909, c. 19, § 1, p. 186; R.S.1913, §§ 4959, 4960; C.S.1922, §§ 4128, 4129; Laws 1929, c. 43, § 2, p. 188; C.S.1929, §§ 16-657, 16-658; R.S.1943, § 16-685; Laws 1947, c. 26, § 4, p. 130; R.R.S.1943, § 16-685; Laws 1957, c. 53, § 1, p. 262; Laws 2019, LB193, § 170.

Effective date September 1, 2019.

ARTICLE 29
NEBRASKA MUNICIPAL AUDITING LAW
(Applicable to cities of the first or second class and villages.)

Section

19-2901. Act, how cited.

19-2902. Terms, defined.

19-2904. Annual audit; contents.

19-2905. Annual audit report; supplemental report; copies; filing; public records; retain for five years.

19-2907. Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.

19-2908. Act, how construed; failure to comply, effect on taxes levied.

19-2909. Audit; expense; payment.

19-2901 Act, how cited.

Sections 19-2901 to 19-2909 shall be known and may be cited as the Nebraska Municipal Auditing Law.

Source: Laws 1959, c. 69, § 1, p. 296; Laws 2019, LB193, § 171.
Effective date September 1, 2019.

19-2902 Terms, defined.

For purposes of the Nebraska Municipal Auditing Law, unless the context otherwise requires:

(1) Accountant means a duly licensed public accountant or certified public accountant who otherwise is not an employee of or connected in any way with the municipality involved;

(2) Annual audit report means the written report of the accountant and all appended statements and schedules relating thereto presenting or recording the findings of an examination or audit of the financial transactions, affairs, or financial condition of a municipality and its proprietary functions for the fiscal year immediately prior to the making of such annual report;

(3) Fiscal year means the fiscal year for the particular municipality involved or the fiscal year established in section 18-2804 for a proprietary function if different than the municipal fiscal year;

(4) Municipal authority means the city council, the village board of trustees, or any other body or officer having authority to levy taxes, make appropriations, or approve claims for any municipality; and

(5) Municipality means any incorporated city of the first class, city of the second class, or village in this state.

Source: Laws 1959, c. 69, § 2, p. 296; Laws 1993, LB 734, § 29; Laws 2019, LB193, § 172.

Effective date September 1, 2019.

19-2904 Annual audit; contents.

The annual audit report shall set forth, insofar as possible, the financial position and results of financial operations for each fund or group of accounts of the municipality. When the accrual method is selected for the annual audit report, such report shall be in accordance with generally accepted accounting principles. The annual audit report shall also include the professional opinion of the accountant with respect to the financial statements, or, if an opinion cannot be expressed, a declaration that the accountant is unable to express such an opinion with an explanation of the reasons why he or she cannot do so.

Source: Laws 1959, c. 69, § 4, p. 297; Laws 1977, LB 152, § 2; Laws 2019, LB193, § 173.

Effective date September 1, 2019.

19-2905 Annual audit report; supplemental report; copies; filing; public records; retain for five years.

At least three copies of the annual audit report shall be properly signed and attested by the accountant, two copies shall be filed with the clerk of the municipality involved, and one copy shall be filed with the Auditor of Public Accounts. The copy of the annual audit report submitted to the Auditor of Public Accounts shall be accompanied by a supplemental report, if appropriate, by the accountant making the audit identifying any illegal acts or indications of illegal acts discovered as a result of the audit.

The annual audit report filed, together with any accompanying comment or explanation, shall become a part of the public records of the clerk of the municipality involved and shall at all times thereafter be open and subject to public inspection. The copies filed with the auditor shall be kept as a part of the

public records in that office for at least five years and shall at all times be subject to public inspection.

Source: Laws 1959, c. 69, § 5, p. 297; Laws 1969, c. 93, § 2, p. 459; Laws 1975, LB 446, § 4; Laws 1992, LB 1115, § 1; Laws 2002, LB 568, § 7; Laws 2019, LB193, § 174.
Effective date September 1, 2019.

19-2907 Annual audit; failure or refusal of municipality; mandamus; damages; notice; State Treasurer; withhold distribution of funds.

Should any municipality fail or refuse to cause an annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, then and in such event, any resident taxpayer may make a written demand on the city council or village board of trustees of such municipality to commence such annual audit within thirty days, and if such demand is ignored, a mandamus action may be instituted by any taxpayer or taxpayers residing in such municipality against the municipal authorities of such municipality requiring the municipality to proceed forthwith to cause such audit to be made, and if such action is decided in favor of the taxpayer or taxpayers instituting the same, the municipal authorities of such municipality shall be personally, and jointly and severally, liable for the costs of such action, including a reasonable attorney's fee to be allowed by the court for the attorney employed by the taxpayer or taxpayers and who prosecuted the action. Upon a failure, refusal, or neglect to cause such annual audit to be made as required by sections 19-2903 and 19-2904, and a failure to file a copy thereof with the Auditor of Public Accounts as required by section 19-2905, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such city or village, notify the State Treasurer of such failure to file a copy with the Auditor of Public Accounts. The State Treasurer shall, upon receipt of such notice, withhold distribution of all money to which such city or village may be entitled under the provisions of sections 39-2511 to 39-2520, until such annual audit shall have been made and have been filed with the Auditor of Public Accounts. If such annual audit is not filed within a period of six months from the time of the order and notice of delinquency given by the Auditor of Public Accounts to the State Treasurer, the amount so withheld shall be distributed to the other cities and villages in the county where such delinquent city is located. Upon compliance with the law requiring annual audits, the delinquent city or village shall again become entitled to distribution of all money to which it is entitled from the State Treasurer beginning with the date of such compliance.

Source: Laws 1959, c. 69, § 7, p. 298; Laws 1969, c. 93, § 3, p. 460; Laws 2019, LB193, § 175.
Effective date September 1, 2019.

19-2908 Act, how construed; failure to comply, effect on taxes levied.

The Nebraska Municipal Auditing Law shall not be construed to relieve any officer of any duties now required by law of him or her with relation to public accounts of a municipality or the disbursement of public funds of a municipality. Failure of the municipality to comply with any provisions of the Nebraska Municipal Auditing Law shall not affect the legality of taxes levied for any of the

funds of such municipality or any special assessments levied in connection with public improvements.

Source: Laws 1959, c. 69, § 8, p. 298; Laws 2019, LB193, § 176.
Effective date September 1, 2019.

19-2909 Audit; expense; payment.

The expenses of the audit required by the Nebraska Municipal Auditing Law shall be paid by the municipal authorities of the municipality involved from appropriate municipal funds.

Source: Laws 1959, c. 69, § 9, p. 298; Laws 2019, LB193, § 177.
Effective date September 1, 2019.

ARTICLE 30

MUNICIPAL ELECTIONS

(Applicable to cities of the first or second class and villages.)

Section

19-3052. Annexation of territory; redistricting; when.

19-3052 Annexation of territory; redistricting; when.

(1) For purposes of this section, municipality means any city of the first class, city of the second class, or village which elects members of the city council or village board of trustees by districts.

(2) Any municipality which annexes territory and thereby brings sufficient new residents into such municipality so as to require that election districts be redrawn to maintain substantial population equality between districts shall redistrict its election districts so that such districts are substantially equal in population within one hundred and eighty days after the effective date of the ordinance annexing the territory. Such redistricting shall create election districts which are substantially equal in population as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(3) No municipality which proposes to annex territory and thereby bring new residents into the municipality shall annex such territory unless the redistricting required by subsection (2) of this section will be accomplished at least eighty days prior to the next primary election in which candidates for the city council or village board of trustees are nominated.

(4)(a) No city of the first class or city of the second class shall annex any territory during the period from eighty days prior to any primary election in which candidates for the city council are nominated until the date of the general election of the same year if such annexation would bring sufficient new residents into such city so as to require that election districts be redrawn to maintain substantial population equality between districts.

(b) No village shall annex any territory during the period eighty days prior to the election at which members of the village board of trustees are chosen until the date of such election if such annexation would bring sufficient new residents into such village so as to require that election districts be redrawn to maintain substantial population equality between districts.

(5)(a) No proposed annexation by a municipality shall be restricted or governed by this section unless such annexation would bring sufficient new

residents into such municipality so as to require the election districts of the municipality to be redrawn to maintain substantial population equality between districts.

(b) Nothing in this section shall be construed to require a municipality to redraw the boundaries of its election districts following an annexation unless such annexation brought sufficient new residents into such municipality so as to require such redistricting to maintain substantial population equality between districts.

(c) For the purposes of this section only, a municipal annexation shall be held to have brought sufficient new residents into such municipality so as to require that its election districts be redrawn to maintain substantial population equality between districts if, following such annexation, the total range of deviation from the mean population of each election district, according to the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, exceeds ten percent.

Source: Laws 1994, LB 630, § 1; Laws 2019, LB67, § 4; Laws 2019, LB193, § 178.

Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB67, section 4, with LB193, section 178, to reflect all amendments.

ARTICLE 31

MUNICIPAL VACANCIES

(Applicable to cities of the first or second class and villages.)

Section

19-3101. City council or village board of trustees; vacancy; when.

19-3101 City council or village board of trustees; vacancy; when.

In all cities of the first class, cities of the second class, and villages, regardless of the form of government, in addition to the events listed in section 32-560 and any other reasons for a vacancy provided by law, after notice and a hearing, a vacancy on the city council or village board of trustees shall exist if a member is absent from more than five consecutive regular meetings of the city council or village board of trustees unless the absences are excused by a majority vote of the remaining members.

Source: Laws 2002, LB 1054, § 1; Laws 2019, LB193, § 179.

Effective date September 1, 2019.

ARTICLE 33

OFFSTREET PARKING

(Applicable to cities of the primary, first, or second class.)

(a) OFFSTREET PARKING DISTRICT ACT

Section

19-3302. Terms, defined.
 19-3303. Districts authorized; powers.
 19-3304. Notice; given or posted by whom.
 19-3305. Proceedings, taxes or assessments levied, bonds issued; validity.
 19-3306. Procedure authorized.
 19-3307. Remedies not exclusive.
 19-3308. Curative clauses; cumulative.

§ 19-3302**CITIES AND VILLAGES; PARTICULAR CLASSES**

Section

- 19-3309. Alternative authority and procedure.
 19-3310. Act, liberally construed.
 19-3311. Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.
 19-3312. Proposed districts; boundaries; notice; objections; hearing.
 19-3313. Objections to formation of district; percentage required; effect; designation of district.
 19-3314. Costs; special assessment; notice; contents; appeal.
 19-3315. Taxes and assessments; purpose; procedure; notice; hearing.
 19-3315.01. Taxes, assessments, and revenue; use; notice; protest.
 19-3316. Assessments; delinquent; interest; notice; lien; payment.
 19-3317. Bonds, authorized; interest; rate; funding; terms; warrants.
 19-3318. Proposed offstreet parking district; petition; contents; signers; requisite number.
 19-3319. Petition; notice; protest.
 19-3320. District boundaries; change; notice; contents.
 19-3321. District boundaries; additional land; notice; mailing; protest; number required; effect.
 19-3322. District; land not included.
 19-3323. Termination of proceedings for creation or change of district by protest; effect.
 19-3324. Protest or objection; withdrawal; effect.
 19-3325. Objection or protest; estoppel.
 19-3326. Issuance of bonds; certificate by city clerk; annual taxes; collection.

(b) MISCELLANEOUS

- 19-3327. Offstreet parking; additional authority; notice; hearing; written objections; resolution; procedure.

(a) OFFSTREET PARKING DISTRICT ACT**19-3302 Terms, defined.**

As used in the Offstreet Parking District Act, unless the context otherwise requires, offstreet parking facilities includes parking lots, garages, buildings, and multifloor buildings for the parking of motor vehicles.

Source: Laws 1967, c. 60, § 2, p. 198; R.S.Supp.,1967, § 16-813; Laws 1969, c. 88, § 2, p. 437; Laws 2019, LB193, § 180.
 Effective date September 1, 2019.

19-3303 Districts authorized; powers.

In addition to matters specifically set forth in the Offstreet Parking District Act, cities of the primary class, cities of the first class, and cities of the second class are authorized to conduct the following activities:

- (1) The formation of offstreet parking districts;
- (2) The acquisition of lands, property, and rights-of-way necessary or convenient for use as offstreet parking facilities;
- (3) The acquisition of lands, property, and rights-of-way necessary or convenient for the opening, widening, straightening, or extending of streets or alleys necessary or convenient for ingress to and egress from any offstreet parking facility;
- (4) The acquisition by condemnation, purchase, or gift of property or any interest therein. Any lands or property necessary or convenient for offstreet parking facilities may be acquired in fee simple by condemnation or otherwise;

(5) The improvement of any acquired lands by the construction thereon of garages or other buildings, including multifloor buildings, or improvements necessary or convenient for offstreet parking facilities including paying from revenue received pursuant to the Offstreet Parking District Act all or a portion of the cost of a covered or uncovered mall to be constructed in a street or alley pursuant to city authority to construct such improvements in connection with paving and street improvements;

(6) The improvement of parking places and any alleys, streets, or ways necessary or convenient for ingress to or egress from offstreet parking facilities;

(7) The issuance, sale, and payment of bonds to pay the cost and expense of any acquisition or improvement authorized by the Offstreet Parking District Act;

(8) The administration, maintenance, operation, and repair of such offstreet parking facilities, including the maintenance of parking meters thereon;

(9) The collection of fees or charges to pay all or any part of the cost of improving, repairing, maintaining, or operating offstreet parking facilities and of acquiring and improving offstreet parking facilities;

(10) The employment of engineers, attorneys, and other persons necessary or convenient for the doing of any acts authorized by the Offstreet Parking District Act; and

(11) The doing of all acts and things necessary or convenient for the accomplishment of the purpose of the Offstreet Parking District Act. The enumeration of specific authority in the Offstreet Parking District Act does not limit in any way the general authority granted by the act.

Source: Laws 1967, c. 60, § 3, p. 198; R.S.Supp.,1967, § 16-814; Laws 1969, c. 88, § 3, p. 438; Laws 1972, LB 1430, § 1; Laws 2019, LB193, § 181.

Effective date September 1, 2019.

19-3304 Notice; given or posted by whom.

Whenever any notice is to be given or posted pursuant to the Offstreet Parking District Act and the officer to give or post notice is not designated, the notice shall be given or posted by the city engineer. Any notice or posting shall not be invalidated because such notice or posting is given or done by an officer other than those whose duty it is to give the notice or perform the posting.

Source: Laws 1967, c. 60, § 4, p. 200; R.S.Supp.,1967, § 16-815; Laws 1969, c. 88, § 4, p. 439; Laws 2019, LB193, § 182.

Effective date September 1, 2019.

19-3305 Proceedings, taxes or assessments levied, bonds issued; validity.

Any proceedings taken, taxes or assessments levied, or bonds issued pursuant to the Offstreet Parking District Act shall not be held invalid for failure to comply with the act.

Source: Laws 1967, c. 60, § 5, p. 200; R.S.Supp.,1967, § 16-816; Laws 1969, c. 88, § 5, p. 439; Laws 2019, LB193, § 183.

Effective date September 1, 2019.

19-3306 Procedure authorized.

Any procedure not expressly set forth in the Offstreet Parking District Act but deemed necessary or convenient to carry out any of the purposes of the act is authorized.

Source: Laws 1967, c. 60, § 6, p. 200; R.S.Supp.,1967, § 16-817; Laws 1969, c. 88, § 6, p. 440; Laws 2019, LB193, § 184.
Effective date September 1, 2019.

19-3307 Remedies not exclusive.

The remedies provided in the Offstreet Parking District Act for the enforcement of taxes or assessments levied or bonds issued pursuant to the act are not exclusive.

Source: Laws 1967, c. 60, § 7, p. 200; R.S.Supp.,1967, § 16-818; Laws 1969, c. 88, § 7, p. 440; Laws 2019, LB193, § 185.
Effective date September 1, 2019.

19-3308 Curative clauses; cumulative.

The curative clauses of the Offstreet Parking District Act are cumulative, and each is to be given full effect.

Source: Laws 1967, c. 60, § 8, p. 200; R.S.Supp.,1967, § 16-819; Laws 1969, c. 88, § 8, p. 440; Laws 2019, LB193, § 186.
Effective date September 1, 2019.

19-3309 Alternative authority and procedure.

The Offstreet Parking District Act does not affect any other law relating to the same or any similar subject but provides an alternative authority and procedure for the subject to which it relates. When proceeding under the act, only the provisions of the act need be followed.

Source: Laws 1967, c. 60, § 9, p. 200; R.S.Supp.,1967, § 16-820; Laws 1969, c. 88, § 9, p. 440; Laws 2019, LB193, § 187.
Effective date September 1, 2019.

19-3310 Act, liberally construed.

The Offstreet Parking District Act shall be liberally construed.

Source: Laws 1967, c. 60, § 10, p. 200; R.S.Supp.,1967, § 16-821; Laws 1969, c. 88, § 10, p. 440; Laws 2019, LB193, § 188.
Effective date September 1, 2019.

19-3311 Offstreet parking facilities; authorized; powers; home rule charter provisions excepted; limitations; duties of city council.

Notwithstanding the provisions of any home rule charter and in addition to the powers set out in sections 15-269 to 15-276 and 16-801 to 16-811, any city of the primary class, city of the first class, or city of the second class is hereby authorized to own, purchase, construct, equip, lease, either as lessee or lessor, or operate within such city, offstreet parking facilities for the use of the general public and to refund bonds of the city issued pursuant to the Offstreet Parking District Act, or in a city of the first class to refund outstanding bonds issued to purchase, construct, equip, or operate such offstreet parking facilities pursuant to sections 16-801 to 16-811. Except as otherwise provided in any home rule charter, the grant of power in this section does not include power to engage,

directly or indirectly, in the sale of gasoline, oil, or other merchandise or in furnishing of any service other than of parking motor vehicles as provided in the act. Any such city shall have the authority to acquire by grant, contract, or purchase, or through condemnation, as provided by law or by any home rule charter for such acquisition, all real or personal property, including a site or sites on which to construct such offstreet parking facility, necessary or convenient in carrying out of this grant of power. Property now used or hereafter acquired for public offstreet motor vehicle parking by a private operator in such cities shall not be subject to condemnation. Before any such city may commence a program to construct, purchase, or acquire by other means a proposed offstreet parking facility or facilities, notice shall be given, by publication once each week for not less than thirty days, inviting application for private ownership and operation of offstreet parking facilities, which notice shall fix a date for a public hearing on any application received. If no application or applications have been received or if received, the same have been disapproved by the city council of such city after a public hearing concerning such applications, then such city may proceed in the exercise of the powers granted in this section. The procedure to condemn property shall be exercised in the manner set forth in sections 76-701 to 76-724, except as to properties specifically excluded by section 76-703, and as to which sections 19-701 to 19-707 are applicable. The duties set forth for the mayor and city council in sections 19-3312 to 19-3325 shall be the duties and responsibilities of the city council in any city which by law or by home rule charter has exclusively vested all legislative powers of the city in such city council.

Source: Laws 1967, c. 60, § 11, p. 200; R.S.Supp.,1967, § 16-822; Laws 1969, c. 88, § 11, p. 440; Laws 1973, LB 540, § 1; Laws 1975, LB 564, § 1; Laws 2019, LB193, § 189.
Effective date September 1, 2019.

19-3312 Proposed districts; boundaries; notice; objections; hearing.

The mayor and city council may fix and establish by resolution pursuant to the Offstreet Parking District Act the boundaries of a proposed offstreet parking district, which boundaries shall include all the land in the district which in the opinion of the mayor and city council will be specially benefited thereby. Notice of the time and place of a hearing before the city council on the creation of such district and of protests and objections to the creation of the district as set forth in the notice shall be given by publication one time each week for not less than three weeks in a legal newspaper in or of general circulation in the city. The notice shall also set forth the proposed boundaries of the district and the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility. Not later than the hour set for the hearing any owner or any person interested in any real estate within the proposed district may severally or with other owners file with the city clerk written objections to the thing proposed to be done, the extent of the proposed district, or both, and every person so interested shall have a right to protest on any grounds and to object to his or her real estate being included in the district, and at such hearing all objections and protests shall be heard and passed upon by the mayor and city council.

Source: Laws 1967, c. 60, § 12, p. 201; R.S.Supp.,1967, § 16-823; Laws 1969, c. 88, § 12, p. 441; Laws 2019, LB193, § 190.
Effective date September 1, 2019.

19-3313 Objections to formation of district; percentage required; effect; designation of district.

If the owners of the record title representing more than fifty percent of the taxable valuation of all of the taxable real property included in a proposed offstreet parking district or districts under the Offstreet Parking District Act, and who were such owners at the time the notice of hearing on objections to the creation of the district was first published, file with the city clerk within twenty days of the first publication of the notice written objections to the formation of the district, such district shall not be formed. If objections are not filed by owners of such fifty percent of the taxable valuation of all of the taxable real property and if the mayor and city council find, after considering any other protests and objections that may be filed and after considering the evidence presented at the hearing, that the public health, welfare, convenience, or necessity requires the formation of such an offstreet parking district and facilities, then such district shall be formed by ordinance. If the mayor and city council find that the boundaries as set forth in the resolution and notice include land which should not be included, then the ordinance shall fix the boundaries of the district so as to exclude such land. Each district formed pursuant to this section shall be numbered and the designation of the district shall be called, using appropriate numbers, Vehicle Offstreet Parking District No. of the City of, Nebraska. The ordinance creating the district need not designate the exact location of the proposed offstreet parking facility but shall designate the engineer's estimate of the sum of money to be expended in the acquisition of property and construction of such offstreet parking facility or the share of such project as will be borne by the district. The total cost and expenses shall include:

- (1) The amounts estimated to be paid for the property to be acquired;
- (2) All costs and expenses in construction of the offstreet parking facility;
- (3) All engineering expense; and
- (4) The estimated expense of issuing and selling bonds and all other expenses which the city would not have except for the creation of such offstreet parking district.

Source: Laws 1967, c. 60, § 13, p. 202; R.S.Supp.,1967, § 16-824; Laws 1969, c. 88, § 13, p. 442; Laws 1979, LB 187, § 85; Laws 1992, LB 719A, § 85; Laws 2019, LB193, § 191.
Effective date September 1, 2019.

19-3314 Costs; special assessment; notice; contents; appeal.

In the ordinance creating an offstreet parking district pursuant to the Offstreet Parking District Act, the mayor and city council shall provide that in addition to the levy of taxes and pledge of revenue all or a portion of the cost of acquisition, including construction, maintenance, repair, and reconstruction of any offstreet parking facility may be paid for by special assessment against the real estate located in such district in proportion to the special benefit of each parcel of real estate. The amounts of such special assessments shall be determined by the mayor and city council sitting as a board of equalization. Notice of a hearing on any special assessments to be levied under section 19-3315 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a

legal newspaper in or of general circulation in the city. The notice shall provide the date, time, and place of hearing to determine any objection or protest by landowners in the district as to the amount of assessment made against their land. An appeal by writ of error or direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts of such city.

Source: Laws 1967, c. 60, § 14, p. 203; R.S.Supp.,1967, § 16-825; Laws 1969, c. 88, § 14, p. 443; Laws 1972, LB 1430, § 2; Laws 1973, LB 540, § 1; Laws 2019, LB193, § 192.
Effective date September 1, 2019.

19-3315 Taxes and assessments; purpose; procedure; notice; hearing.

The mayor and city council may by resolution levy and assess taxes and assessments under the Offstreet Parking District Act as follows:

(1) A property tax within any offstreet parking district of not to exceed thirty-five cents on each one hundred dollars of taxable valuation of taxable property within such district subject to section 77-3443 to pay all or any part of the cost to improve, repair, maintain, reconstruct, operate, or acquire any offstreet parking facility and to pay principal and interest on any bonds issued for an offstreet parking facility for such district. Such tax shall be levied and collected at the same time and under the same provisions as the regular general city tax. The taxes collected from any such district shall be used only for the benefit of such district. For purposes of subsection (2) of section 77-3443, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district;

(2) A special assessment against the real property located in an offstreet parking district to the extent of the special benefit thereto for the purpose of paying all or any part of the total costs and expenses of acquisition, including construction, of an offstreet parking facility in such district. The special assessment shall be levied as provided in section 19-3314. In the event that subsequent to the levy of assessments the use of any parcel of land changes so that, had the new use existed at the time of making such levy, the assessment on such parcel would have been higher than the assessment actually made, an additional assessment may be made on such parcel by the mayor and city council taking into consideration the new and changed use of the property. The total amount of assessments levied under this subdivision shall not exceed the total costs and expenses of acquiring a facility defined in section 19-3313. The levy of an additional assessment shall not reduce or affect in any manner the assessments previously levied. Additional assessments shall be levied as provided in section 19-3314, except that published notice may be omitted if notice is personally served on the owner at least twenty days prior to the date of hearing. All assessments levied under this subdivision shall constitute a sinking fund for the payment of principal and interest on bonds issued for such facility as provided by section 19-3317 until such bonds and interest are fully paid; and

(3) A special assessment against the real property located in an offstreet parking district to the extent of special benefit thereto for the purpose of paying

all or any part of the costs of maintenance, repair, and reconstruction of such offstreet parking facility in the district. The mayor and city council may levy such assessments under either of the following methods: (a) The mayor and city council may, not more frequently than annually, determine the costs of maintenance, repair, and reconstruction of such facility and such costs shall be assessed to the real property located in such district as provided by section 19-3314. At the hearing on such assessments, objections may be made to the total costs and the proposed allocation of such costs among the parcels of real property in such district; or (b) after notice is given to the owners as provided in section 19-3314, the mayor and city council may establish and may change from time to time the percentage of such costs of maintenance, repair, and reconstruction which each parcel of real property in any district shall pay. Thereafter, the mayor and city council shall annually determine the total amount of such costs for each period since costs were last assessed and shall after a hearing assess such costs to the real property in the district in accordance with the percentages previously established or as established at such hearing. Notice of such hearing shall be given as provided in section 19-3314 and shall state the total cost and percentage to be assessed to each parcel of real property. Unless written objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages shall be deemed to have been waived and assessments shall be levied as stated in such notice unless the mayor and city council reduce any assessment. At such hearing, the assessment percentage for the assessment of costs in the future may be changed.

Source: Laws 1967, c. 60, § 15, p. 203; R.S.Supp.,1967, § 16-826; Laws 1969, c. 88, § 15, p. 444; Laws 1973, LB 540, § 3; Laws 1975, LB 564, § 2; Laws 1979, LB 187, § 86; Laws 1992, LB 719A, § 86; Laws 1997, LB 269, § 21; Laws 2002, LB 994, § 3; Laws 2019, LB193, § 193.

Effective date September 1, 2019.

19-3315.01 Taxes, assessments, and revenue; use; notice; protest.

(1) In addition to uses otherwise authorized in the Offstreet Parking District Act, any money available from taxes or assessments levied pursuant to section 19-3315 or revenue derived from the operation of an offstreet parking facility may be used in an offstreet parking district for any one or more of the following purposes as determined by a vote of the majority of the city council:

(a) Improvement of any public place or facility, including landscaping, physical improvements for decoration or security purposes, and plantings;

(b) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, foundations, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(c) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below the ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement;

(d) Creation and implementation of a plan for improving the general architectural design of public areas;

(e) Development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities;

(f) Maintenance, repair, and reconstruction of any publicly owned improvements or facilities;

(g) The creation by ordinance and operation of a revolving loan fund for the purpose of providing financing upon appropriate terms and conditions for capital improvements to privately owned facilities, subject to the following conditions:

(i) No loan from such fund shall exceed an amount equivalent to forty-nine percent of the total cost of the improvements to be financed by the loan;

(ii) The city shall require and receive appropriate security to guarantee the repayment of the loan; and

(iii) The proposed improvements to be financed shall serve to foster the purposes of the Offstreet Parking District Act, promote economic activity, or contribute to the public health, safety, and welfare;

(h) Any other project or undertaking for the betterment of the public facilities, whether the project is capital or noncapital in nature;

(i) Enforcement of parking regulations and the provision of security; and

(j) Employing or contracting for personnel, including administrators, for any improvement program under the Offstreet Parking District Act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

(2) If any part of the revenue from fees and charges on the use of an offstreet parking facility or from onstreet parking meters within the district has been dedicated for the payment of principal or interest on bonds issued pursuant to section 19-3317 or has been pledged as security for such bonds, such revenue shall not be used for the purposes set forth in subsection (1) of this section until such time as such bonds have been fully paid or sufficient revenue has been placed in the sinking fund to guarantee such repayment.

(3) If the city council proposes to exercise the authority granted by subsection (1) of this section for any one or more of the purposes set forth in such subsection within the boundaries of a district in existence prior to September 13, 1997, the city clerk shall give notice of the city council's intention to exercise such authority by publishing notice of such intent in a legal newspaper in or of general circulation in the city once a week for two consecutive weeks. The notice shall describe the proposed new uses for district revenue and shall specify the time for hearing objections to such uses, which time shall be at least fifteen days after the date of publication of the notice. The city clerk shall accept written protests or objections to the approval of the proposed new uses of district revenue. If the owners of real property representing more than fifty percent of the actual valuation of all real property in the district file a written protest or objection within twenty days after the date of publication of the notice, district revenue shall not be applied to such uses.

Source: Laws 1997, LB 746, § 1; Laws 2019, LB193, § 194.

Effective date September 1, 2019.

19-3316 Assessments; delinquent; interest; notice; lien; payment.

Special assessments levied pursuant to section 19-3315 shall become due in fifty days after the date of such levy and shall become delinquent in one or more installments over a period of not to exceed twenty years, in such manner as the mayor and city council shall determine at the time of making the levy. The first installment may become delinquent in fifty days after the date of levy if so specified by the mayor and the city council. Each of such installments shall draw interest before due date of not more than the rate of interest specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and after delinquency at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, as the mayor and city council shall determine at the time the levy shall be made, except that any installment may be paid within fifty days of the date of such levy without interest being charged thereon. If three or more of such installments become delinquent and unpaid on the same property, the mayor and city council may by resolution declare all future installments on such delinquent property to be due on a future fixed date. The resolution shall set forth the description of the property and the name of its record title owner and shall provide that all future installments shall become delinquent upon such fixed date. A copy of such resolution shall be published one time each week for not less than twenty days in a legal newspaper in or of general circulation in the city. After the fixed date, such future installments shall be deemed to be delinquent and the city may proceed to enforce and collect the total amount due and all future installments. Except as otherwise provided, all special assessments levied under section 19-3315 shall be liens on the property and shall be certified for collection and be collected in the same manner as special assessments made for improvements in street improvement districts in the city are collected.

Source: Laws 1967, c. 60, § 16, p. 204; R.S.Supp.,1967, § 16-827; Laws 1969, c. 88, § 16, p. 444; Laws 1973, LB 540, § 4; Laws 1980, LB 933, § 25; Laws 1981, LB 167, § 26; Laws 1986, LB 960, § 17; Laws 2019, LB193, § 195.
Effective date September 1, 2019.

19-3317 Bonds, authorized; interest; rate; funding; terms; warrants.

For the purpose of paying the cost of such offstreet parking facility, or any portion thereof, or to refund all or a portion of any outstanding bonds of the city authorized to be refunded by the Offstreet Parking District Act, the mayor and city council shall have power and may, by ordinance, cause to be issued general obligation bonds of the city, to be called Offstreet Parking Bonds of the City of, Nebraska, payable in not exceeding twenty years from date and bearing interest, payable either annually or semiannually, not exceeding a rate of twelve percent per annum with interest coupons attached. In such cases they shall also provide that special taxes levied within the district pursuant to section 19-3315 shall constitute a sinking fund for the payment of such bonds and the mayor and city council may, in the ordinance, pledge all or any part of the revenue from fees and charges on the use of the parking facility or fees and charges from onstreet parking meters within the district not already pledged as security for such bonds. There shall be levied upon all the taxable property in such city a tax which, together with such sinking fund derived from special assessments and other revenue pledged for the payment of the bonds and interest thereon, shall be sufficient to meet payments of interest and principal as the same become due. All such bonds shall bear such date or dates, mature

at such time or times, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, and be payable in such medium of payment and at such place or places within or without the State of Nebraska as such ordinance may provide. No proceedings for the issuance of bonds of any city shall be required other than those required by the Offstreet Parking District Act. Such bonds may be issued either before or after the completion of the acquisition or construction of the offstreet parking facility, as the mayor and city council may determine best. For the purpose of paying costs of an offstreet parking facility prior to issuance of bonds, warrants may be issued by the mayor and city council upon such terms as the mayor and city council may determine, which warrants shall be redeemed and paid upon the sale of bonds authorized in this section.

Source: Laws 1967, c. 63, § 1, p. 212; Laws 1967, c. 60, § 17, p. 205; R.S.Supp.,1967, § 16-828; Laws 1969, c. 88, § 17, p. 445; Laws 1972, LB 1430, § 3; Laws 1973, LB 540, § 5; Laws 1981, LB 392, § 1; Laws 2019, LB193, § 196.
Effective date September 1, 2019.

19-3318 Proposed offstreet parking district; petition; contents; signers; requisite number.

The owners of the record title of any real property within a given area in any city of the first class or city of the second class representing fifty-five percent of the total taxable valuation of all of the taxable real property within the proposed district to be formed, which district must consist of contiguous lands and lots, may petition the mayor and city council to create a vehicle offstreet parking district by ordinance, which district shall be consecutively numbered, and to acquire property and construct an offstreet parking facility thereon as provided in the Offstreet Parking District Act. For purposes of the act, property separated by streets or alleys shall be deemed to be contiguous.

The petition shall contain:

- (1) A general description of the exterior boundaries of the proposed district;
- (2) A general statement of the estimated amount of money involved in the acquisition of the land and property and construction of the facility;
- (3) A general description of the improvements proposed to be made or constructed; and
- (4) A statement that the petition is filed pursuant to this section.

The petition may consist of any number of separate instruments, but a description of the real property represented by each petitioner shall be included either opposite the signature or by separate instrument.

When the petition is filed, the city clerk shall check or cause it to be checked. If it is signed by qualified signers representing the required percentage of the total taxable valuation, the city clerk shall make a certificate to that effect and present the petition and certificate to the mayor and city council.

Source: Laws 1967, c. 60, § 18, p. 206; R.S.Supp.,1967, § 16-829; Laws 1969, c. 88, § 18, p. 447; Laws 1979, LB 187, § 87; Laws 1992, LB 719A, § 87; Laws 2019, LB193, § 197.
Effective date September 1, 2019.

19-3319 Petition; notice; protest.

When such petition is presented to the mayor and city council pursuant to section 19-3318, it shall be the duty of the mayor and city council to proceed as provided in sections 19-3312 and 19-3313 as upon the passage of a resolution for the creation of an offstreet parking district. The same procedure for publication of notice and objections to the creation of the district shall apply.

Source: Laws 1967, c. 60, § 19, p. 206; R.S.Supp.,1967, § 16-830; Laws 1969, c. 88, § 19, p. 448; Laws 2019, LB193, § 198.
Effective date September 1, 2019.

19-3320 District boundaries; change; notice; contents.

Whether the ordinance creating an offstreet parking district is passed on the initiative of the city council or on the petition of landowners, the city council shall not change the boundaries, except after notice of intention to do so given by the city clerk by one insertion in the legal newspaper in which the ordinance and notice were published. The notice shall describe the proposed change and specify the time for hearing objections, which shall be at least fifteen days after publication of the notice.

Source: Laws 1967, c. 60, § 20, p. 207; R.S.Supp.,1967, § 16-831; Laws 1969, c. 88, § 20, p. 448; Laws 2019, LB193, § 199.
Effective date September 1, 2019.

19-3321 District boundaries; additional land; notice; mailing; protest; number required; effect.

If a change proposed pursuant to section 19-3320 is to include additional land in the offstreet parking district, the city clerk also shall mail a copy of the notice to each person to whom land in the area proposed to be added is assessed as shown in the office of the register of deeds or the county clerk at such person's last-known address. The notice shall be mailed by certified mail at least fifteen days prior to the time set for hearing objections. If the boundaries are changed, objection or protest made by owners of lands excluded by the change shall not be counted in computing a protest but written objection or protest made by owners of the remaining assessable land in the district, including assessable land added by the change and filed with the city clerk not later than the time set for hearing, objecting to the proposed change shall be included in computing the protest. If owners of real property representing more than fifty percent of the taxable valuation of all real property in such new proposed district after the change of boundaries file a written protest within twenty days after the notice is published in such newspaper, then such district may not be changed.

Source: Laws 1967, c. 60, § 21, p. 207; R.S.Supp.,1967, § 16-832; Laws 1969, c. 88, § 21, p. 448; Laws 1979, LB 187, § 88; Laws 1992, LB 719A, § 88; Laws 2019, LB193, § 200.
Effective date September 1, 2019.

19-3322 District; land not included.

Any land which in the judgment of the mayor and city council will not be benefited shall not be included in an offstreet parking district under the Offstreet Parking District Act.

Source: Laws 1967, c. 60, § 22, p. 207; R.S.Supp.,1967, § 16-833; Laws 1969, c. 88, § 22, p. 449; Laws 2019, LB193, § 201.
Effective date September 1, 2019.

19-3323 Termination of proceedings for creation or change of district by protest; effect.

If the proceedings for the creation of an original offstreet parking district or for an offstreet parking district under which the boundaries have been changed, are terminated by a protest to the city council, a proceeding under the Offstreet Parking District Act for the same or substantially the same acquisition and improvement shall not be commenced within one year thereafter, except on petitions signed by owners of the record title representing a majority of the total land area in the district.

Source: Laws 1967, c. 60, § 23, p. 208; R.S.Supp.,1967, § 16-834; Laws 1969, c. 88, § 23, p. 449; Laws 2019, LB193, § 202.
Effective date September 1, 2019.

19-3324 Protest or objection; withdrawal; effect.

Any protest or objection made pursuant to the Offstreet Parking District Act or any signature to such objection or protest may be withdrawn by a written withdrawal signed by the person or persons who signed the protest or objection or who affixed the signature to be withdrawn and filed with the city clerk at any time prior to the determination of the mayor and city council as to whether or not a protest exists. Any protest, objection, or signature withdrawn shall not be counted in computing the protest.

Source: Laws 1967, c. 60, § 24, p. 208; R.S.Supp.,1967, § 16-835; Laws 1969, c. 88, § 24, p. 449; Laws 2019, LB193, § 203.
Effective date September 1, 2019.

19-3325 Objection or protest; estoppel.

Proceedings under the Offstreet Parking District Act shall not be attacked after the hearing upon any grounds not stated in an objection or protest filed pursuant to the act. Any owner of real estate or person interested in any real estate within the district is estopped to attack the proceedings upon any ground not stated in the protest filed by him or her pursuant to the Offstreet Parking District Act.

Source: Laws 1967, c. 60, § 25, p. 208; R.S.Supp.,1967, § 16-836; Laws 1969, c. 88, § 25, p. 450; Laws 2019, LB193, § 204.
Effective date September 1, 2019.

19-3326 Issuance of bonds; certificate by city clerk; annual taxes; collection.

(1) After the issuance of bonds under the Offstreet Parking District Act by a city of the first class or city of the second class, a certificate shall be issued by the city clerk certifying the same to the county treasurer of the county in which such city is located and the annual taxes within the district shall be handled in the same manner and collected in the same manner as intersection bonds for street paving in the cities of the first class or cities of the second class and to be paid to the city for use as provided by the act.

(2) After the issuance of bonds under the Offstreet Parking District Act by a city of the primary class, a certificate shall be issued by the city clerk. Taxes shall be handled and collected as otherwise provided by law or by home rule

charter for such city, and those taxes paid to the city shall be used as provided in the act.

Source: Laws 1967, c. 60, § 26, p. 208; R.S.Supp.,1967, § 16-837; Laws 1969, c. 88, § 26, p. 450; Laws 1975, LB 564, § 3; Laws 2019, LB193, § 205.

Effective date September 1, 2019.

(b) MISCELLANEOUS

19-3327 Offstreet parking; additional authority; notice; hearing; written objections; resolution; procedure.

Any city of the primary class, city of the first class, or city of the second class, after the creation of an offstreet parking district pursuant to the Offstreet Parking District Act, shall have the power to own, purchase, construct, equip, lease, or operate within such city any offstreet parking facility in addition to any offstreet parking facility contemplated at the time of the creation of the district if the mayor and city council are of the opinion that the district will be benefited thereby. Whenever the city council deems it advisable to own, purchase, construct, equip, lease, or operate such additional facility, the city council shall by resolution set forth the engineer's estimate of the sum of money to be expended in the acquisition of property and the construction of the offstreet parking facility and a description of the facility to be constructed, and if such resolution proposes to acquire by grant, contract, or purchase or through condemnation any offstreet parking facility, the resolution shall state the price and conditions and how such facility shall be acquired, and if assessments are to be levied, the resolution shall state the proposed boundaries of the area in the district in which the special assessments shall be levied. Notice of the time and place of a hearing before the city council on such resolution shall be given by publication one time each week for two weeks in a legal newspaper in or of general circulation in the city. The publication shall contain the entire resolution. The last publication shall not be less than five days nor more than two weeks prior to the date set for such hearing. Not later than the hour set for the hearing, any owner or any person interested in any real property within the proposed area may file with the city clerk written objections to the resolution, the extent of the proposed area, or both, and every person so interested shall have a right to protest on any grounds and to object to his or her real property being included in the area. At such hearing all objections and protests shall be heard and passed upon by the mayor and city council. If the owners of record title representing more than sixty percent of the taxable valuation of all of the taxable real property included in such proposed area and who were such owners at the time the notice of hearing on objections to the creation of the facility was first published file a petition with the city clerk within three days of the date set for the hearing, such resolution shall not be passed.

Source: Laws 1973, LB 540, § 6; Laws 1975, LB 564, § 4; Laws 1979, LB 187, § 89; Laws 1992, LB 719A, § 89; Laws 2019, LB193, § 206.
Effective date September 1, 2019.

Cross References

Downtown improvement and parking districts, see section 19-4038.
Offstreet Parking District Act, see section 19-3301.

ARTICLE 35

PENSION PLANS

(Applicable to cities of the first or second class and villages.)

Section

19-3501. Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities or villages; reports.

19-3501 Pension plans authorized; employees covered; contributions; funding past service benefits; joinder in plan by two or more cities or villages; reports.

(1) The city council of cities of the first class and cities of the second class and the village board of trustees of villages may, by appropriate ordinance or proper resolution, establish a pension plan designed and intended for the benefit of the regularly employed or appointed full-time employees of the city or village. Any recognized method of funding a pension plan may be employed. The plan shall be established by appropriate ordinance or proper resolution, which may provide for mandatory contribution by the employee. The city or village may also contribute, in addition to any amounts contributed by the employee, amounts to be used for the purpose of funding employee past service benefits. Any two or more cities of the first class, cities of the second class, and villages may jointly establish such a pension plan by adoption of appropriate ordinances or resolutions. Such a pension plan may be integrated with old age and survivors insurance, otherwise generally known as social security.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The city clerk or village clerk of a city or village with a retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (i) The number of persons participating in the retirement plan;
- (ii) The contribution rates of participants in the plan;
- (iii) Plan assets and liabilities;
- (iv) The names and positions of persons administering the plan;
- (v) The names and positions of persons investing plan assets;
- (vi) The form and nature of investments;
- (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
- (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city clerk or village clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the city council or village board of trustees shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of each report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the city council or village board of trustees does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the city or village. All costs of the audit shall be paid by the city or village. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3) Subsection (1) of this section shall not apply to firefighters or police officers who are included under an existing pension or retirement system established by the municipality employing such firefighters or police officers or the Legislature. If a city of the first class decreases in population to less than five thousand, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, any police officer or firefighter employed by such city on or prior to the date such city becomes a city of the second class shall retain the level of benefits established by the Legislature for police officers or firefighters employed by a city of the first class on the date such city becomes a city of the second class.

Source: Laws 1957, c. 26, § 1, p. 180; Laws 1963, c. 63, § 10, p. 262; Laws 1967, c. 98, § 1, p. 297; R.S.Supp.,1967, § 16-328; Laws 1969, c. 79, § 1, p. 410; Laws 1974, LB 1002, § 1; Laws 1983, LB 291, § 2; Laws 1989, LB 145, § 1; Laws 1998, LB 1191, § 21; Laws 1999, LB 795, § 9; Laws 2011, LB474, § 9; Laws 2014, LB759, § 14; Laws 2017, LB113, § 32; Laws 2017, LB415, § 9; Laws 2019, LB193, § 207.

Effective date September 1, 2019.

ARTICLE 37

ORDINANCES

(Applicable to cities of the first or second class and villages.)

Section

19-3701. Ordinances; effective date.

19-3701 Ordinances; effective date.

All ordinances for the government of any city of the first class, city of the second class, or village, adopted by the voters of such city or village after submission to them by either initiative or referendum petition, shall become immediately effective thereafter. No ordinance for the government of any such

city or village except as provided in sections 16-405 and 17-613, which has been adopted by such city or village without submission to the voters of such city or village, shall go into effect until fifteen days after the passage of such ordinance.

Source: Laws 1897, c. 32, § 12, p. 234; R.S.1913, § 5237; Laws 1915, c. 96, § 1, p. 238; C.S.1922, § 4436; C.S.1929, § 18-512; R.S.1943, § 18-130; Laws 1971, LB 282, § 3; Laws 2019, LB193, § 208.
Effective date September 1, 2019.

Cross References

For other provisions applicable to ordinances of cities of the first and second class and villages, see sections 16-247, 16-403 to 16-405, 17-613 to 17-616, and 19-604.

ARTICLE 38

POLICE SERVICES

(Applicable to cities of the first or second class and villages.)

Section

19-3801. Contract with county board for police services; sheriff; powers; duties.

19-3801 Contract with county board for police services; sheriff; powers; duties.

Any city of the first class, city of the second class, or village may, under the provisions of the Interlocal Cooperation Act or Joint Public Agency Act, enter into a contract with the county board of its county for police services to be provided by the county sheriff. The county board shall enter into such a contract when requested by a village to do so. Whenever any such contract has been entered into, the sheriff shall, in addition to his or her other powers and duties, have all the powers and duties of peace officers within and for the city or village so contracting.

Source: Laws 1971, LB 594, § 1; Laws 1999, LB 87, § 65; Laws 2019, LB193, § 209.
Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

ARTICLE 40

BUSINESS IMPROVEMENT DISTRICTS

(Applicable to all cities.)

Section

19-4017. Act; purpose.
19-4017.01. Terms, defined.
19-4018. Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.
19-4019. Available funds; uses; enumerated.
19-4021. Business improvement board; membership; powers; duties.
19-4022. Business improvement board; members; terms; vacancy.
19-4026. Hearing to create a business improvement district; call by petition.
19-4027. Hearing to create a business improvement district; city council; duties; protest; effect.

Section

- 19-4028. Proposed business improvement district; boundary amendment; hearing continued; procedure.
- 19-4029. City council; ordinance to establish business improvement district; when; contents; taxation; basis.
- 19-4029.01. Notice of hearing; manner given; contents; notice to neighborhood association.
- 19-4029.04. Hearing for expansion of boundaries; city council; duties; protest; effect.
- 19-4029.05. Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.
- 19-4030. Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.
- 19-4031. Business improvement district; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.
- 19-4032. Business improvement district; additional assessment or levy; when; procedure.
- 19-4033. Special assessments or taxes; limitations; effect.
- 19-4034. Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.
- 19-4035. Business improvement district; dissolution; procedure.
- 19-4036. Dissolved district; assets; disposition.
- 19-4037. Funds and grants; use.

19-4017 Act; purpose.

Cities of the metropolitan class, primary class, first class, and second class in the state at present have business areas in need of improvement and development, but lack the funds with which to provide and maintain such improvements. The purpose of the Business Improvement District Act is to provide a means by which such cities may raise the necessary funds to be used for the purpose of providing and maintaining the improvements authorized by the act.

Source: Laws 1979, LB 251, § 3; Laws 2015, LB168, § 3; Laws 2019, LB193, § 210.
Effective date September 1, 2019.

19-4017.01 Terms, defined.

For purposes of the Business Improvement District Act:

(1) Assessable unit means front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the ordinance creating a business improvement district;

(2) Business area means an established area of the city zoned for business, public, or commercial purposes;

(3) Record owner means the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner and the only person entitled to petition pursuant to section 19-4026 or 19-4029.03 or protest pursuant to section 19-4027 or 19-4029.04, if the contract is recorded in the register of deeds office in the county in which the business area is located; and

(4) Space means the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for

use in connection with a business or profession of a user, excepting all space owned or used by political subdivisions.

Source: Laws 1983, LB 22, § 1; Laws 2015, LB168, § 4; Laws 2019, LB193, § 211.
Effective date September 1, 2019.

19-4018 Cities; business improvement district; special assessment; business occupation tax; exceptions; use of proceeds.

Pursuant to the Business Improvement District Act, cities of the metropolitan class, primary class, first class, or second class may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business occupation tax on businesses and users of space within a business improvement district. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The proceeds or other available funds may be used for the purposes stated in section 19-4019.

Source: Laws 1979, LB 251, § 4; Laws 2014, LB474, § 8; Laws 2019, LB193, § 212.
Effective date September 1, 2019.

19-4019 Available funds; uses; enumerated.

Any money available under section 19-4018 may be used for any one or more of the following purposes:

(1) The acquisition, construction, maintenance, and operation of public offstreet parking facilities for the benefit of the business improvement district area;

(2) Improvement of any public place or facility in the business improvement district area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(3) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements in the business improvement district area;

(4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the business improvement district area;

(5) Creation and implementation of a plan for improving the general architectural design of public areas in the business improvement district;

(6) The development of any public activities and promotion of public events, including the management and promotion and advocacy of retail trade activities or other promotional activities, in the business improvement district area;

(7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Business Improvement District Act;

(8) Any other project or undertaking for the betterment of the public facilities in the business improvement district area, whether the project be capital or noncapital in nature;

(9) Enforcement of parking regulations and the provision of security within the business improvement district area; and

(10) Employing or contracting for personnel, including administrators for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

Source: Laws 1979, LB 251, § 5; Laws 1989, LB 194, § 1; Laws 2019, LB193, § 213.

Effective date September 1, 2019.

19-4021 Business improvement board; membership; powers; duties.

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the business improvement board. The business improvement board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under the Business Improvement District Act, more than one business improvement district as part of the same plan for improvements for that business area may be proposed. The business improvement board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council. The business improvement board shall also review and make recommendations to the city regarding expansion of the boundaries of the business improvement district under sections 19-4029.02 to 19-4029.05.

Source: Laws 1979, LB 251, § 7; Laws 1983, LB 22, § 3; Laws 2015, LB168, § 6; Laws 2019, LB193, § 214.

Effective date September 1, 2019.

19-4022 Business improvement board; members; terms; vacancy.

The business improvement board shall consist of five or more members to serve such terms as the city council, by resolution, determines. The mayor, with the approval of the city council, shall fill any vacancy for the term vacated. A board member may serve more than one term. The board shall select from its members a chairperson and a secretary.

Source: Laws 1979, LB 251, § 8; Laws 2019, LB193, § 215.

Effective date September 1, 2019.

19-4026 Hearing to create a business improvement district; call by petition.

In the event that the city council has not acted to call a hearing to create a business improvement district as provided in section 19-4029, it shall do so when presented with a petition signed by the record owners of thirty percent of

the assessable front footage in a business area or by the users of thirty percent of space in a business area.

Source: Laws 1979, LB 251, § 12; Laws 1983, LB 22, § 6; Laws 2015, LB168, § 8; Laws 2019, LB193, § 216.

Effective date September 1, 2019.

19-4027 Hearing to create a business improvement district; city council; duties; protest; effect.

Whenever a hearing is held under section 19-4029, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the proposed business improvement district. If an occupation tax is to be used, proceedings shall terminate if protest is made by users of over fifty percent of the space in the proposed business improvement district.

Source: Laws 1979, LB 251, § 13; Laws 1983, LB 22, § 7; Laws 2015, LB168, § 9; Laws 2019, LB193, § 217.

Effective date September 1, 2019.

19-4028 Proposed business improvement district; boundary amendment; hearing continued; procedure.

If the city council decides to change the boundaries of the proposed business improvement district or to change the proposed modifications to the boundaries of an existing business improvement district or districts from those recommended by the business improvement board, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4029.01, showing the boundary amendments. The city council may not expand the proposed boundaries recommended by the business improvement board without the city council's proposed boundaries being considered by the business improvement board.

Source: Laws 1979, LB 251, § 14; Laws 1983, LB 22, § 8; Laws 2015, LB168, § 10; Laws 2019, LB193, § 218.

Effective date September 1, 2019.

19-4029 City council; ordinance to establish business improvement district; when; contents; taxation; basis.

Upon receiving a recommendation from a business improvement board, the city council may create one or more business improvement districts. The city council, following a hearing, may establish or reject any proposed business improvement district or districts. If the city council decides to establish any business improvement district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;

(2) The time and place the hearing was held concerning the formation of the business improvement district;

(3) A statement that a business improvement district has been established;

(4) The purposes of the business improvement district, and the public improvements and facilities to be included in such district;

(5) The description of the boundaries of the business improvement district;

(6) A statement that the businesses and users of space in the business improvement district shall be subject to the general business occupation tax or that the real property in the business improvement district will be subject to the special assessment authorized by the Business Improvement District Act;

(7) The proposed method of assessment to be imposed within the business improvement district or the initial rate of the occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the business improvement district.

Source: Laws 1979, LB 251, § 15; Laws 1983, LB 22, § 9; Laws 2015, LB168, § 11; Laws 2019, LB193, § 219.
Effective date September 1, 2019.

19-4029.01 Notice of hearing; manner given; contents; notice to neighborhood association.

(1) At least ten days prior to the date of any hearing under sections 19-4029, 19-4029.02, and 19-4029.03, notice of such hearing shall be given by:

(a) One publication of the notice of hearing in a legal newspaper in or of general circulation in the city;

(b) Mailing a copy of the notice of hearing to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county;

(c) Providing a copy of the notice of hearing to any neighborhood association registered pursuant to subsection (2) of this section in the manner requested by such neighborhood association; and

(d) If an occupation tax is to be imposed, mailing a copy of the notice of hearing to each user of space in the proposed business improvement district.

(2) The notice required by subdivision (1)(c) of this section shall be provided to any neighborhood association which is registered pursuant to this subsection and whose area of representation is located, in whole or in part, within a one-mile radius of the existing or proposed boundaries of the business improvement district. Each neighborhood association desiring to receive such notice shall register with the city the area of representation of such association and provide the name of and contact information for the individual designated to receive notice on behalf of such association and the requested manner of service, whether by email or first-class or certified mail. The registration shall be in accordance with any rules and regulations adopted and promulgated by the city.

(3) Any notice of hearing for any hearing required by section 19-4029 shall contain the following information:

(a) A description of the boundaries of the proposed business improvement district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the business improvement district;

(c) The proposed public facilities and improvements to be made or maintained within any business improvement district; and

(d) The proposed or estimated costs for improvements and facilities within the proposed business improvement district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

(4) Any notice of hearing for any hearing required by sections 19-4029.02 and 19-4029.03 shall contain the following information:

(a) A description of the boundaries of the area to be added to the existing business improvement district and a description of the new boundaries of the modified business improvement district;

(b) The time and place of a hearing to be held by the city council to consider establishment of the modified business improvement district;

(c) The new public facilities and improvements, if any, to be made or maintained within any business improvement district; and

(d) The proposed or estimated costs for new and existing improvements and facilities within the proposed modified business improvement district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Source: Laws 1979, LB 251, § 11; Laws 1983, LB 22, § 5; R.S.1943, (2012), § 19-4025; Laws 2015, LB168, § 7; Laws 2016, LB700, § 2; Laws 2019, LB193, § 220; Laws 2019, LB196, § 3.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB193, section 220, with LB196, section 3, to reflect all amendments.

19-4029.04 Hearing for expansion of boundaries; city council; duties; protest; effect.

Whenever a hearing is held to expand business improvement district boundaries under section 19-4029.02 or 19-4029.03, the city council shall:

(1) Hear all protests and receive evidence for or against the proposed action;

(2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and

(3) Continue the hearing from time to time as the city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty percent of the assessable units in the modified business improvement district as proposed. If an occupation tax is to be used, proceedings shall

terminate if protest is made by users of over fifty percent of space in the modified business improvement district as proposed.

Source: Laws 2015, LB168, § 14; Laws 2019, LB193, § 221.
Effective date September 1, 2019.

19-4029.05 Expansion of boundaries; city council; ordinance; when; contents; taxation; basis.

The city council, following a hearing under section 19-4029.02 or 19-4029.03, may expand the boundaries of any business improvement district or districts. If the city council decides to expand the boundaries, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The name of the business improvement district whose boundaries will be expanded;

(2) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with section 19-4029.01;

(3) The time and place the hearing was held concerning the new boundaries of the business improvement district;

(4) The purposes of the boundary expansion and any new public improvements and facilities to be included in the business improvement district;

(5) The description of the new boundaries of the business improvement district;

(6) A statement that the businesses and users of space in the modified business improvement district established by the ordinance shall be subject to the general business occupation tax or that the real property in the modified business improvement district will be subject to the special assessment authorized by the Business Improvement District Act;

(7) The proposed method of assessment to be imposed within the business improvement district or the initial rate of the occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the business improvement district.

Source: Laws 2015, LB168, § 15; Laws 2019, LB193, § 222.
Effective date September 1, 2019.

19-4030 Business improvement district; special assessment; purpose; notice; appeal; lien; area within riverfront development district; how treated.

A city may levy a special assessment against the real estate located in a business improvement district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within the business improvement district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the business improvement

district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under the Business Improvement District Act shall be given to the landowners in the business improvement district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a legal newspaper in or of general circulation in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the business improvement district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected. If any part of a business improvement district overlaps with a riverfront development district in which a special assessment is already being levied pursuant to section 19-5313, the city creating the business improvement district shall not impose the business improvement district's special assessment within the overlapping area.

Source: Laws 1979, LB 251, § 16; Laws 1983, LB 22, § 10; Laws 2015, LB168, § 16; Laws 2017, LB97, § 18; Laws 2019, LB193, § 223.
Effective date September 1, 2019.

19-4031 Business improvement district; general business occupation tax; purpose; exceptions; notice; appeal; collection; basis; area within riverfront development district; how treated.

(1) In addition to or in place of the special assessments authorized by the Business Improvement District Act, a city may levy a general business occupation tax upon the businesses and users of space within a business improvement district established for acquiring, constructing, maintaining, or operating public offstreet parking facilities and providing in connection therewith other public improvements and facilities authorized by the Business Improvement District Act, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within the business improvement district. Notice of a hearing on any such tax levied under the Business Improvement District Act shall be given to the businesses and users of space of the business improvement districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax

imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) If any part of a business improvement district overlaps with a riverfront development district in which a general business occupation tax is already being levied pursuant to section 19-5312, the city creating the business improvement district shall not impose the business improvement district's occupation tax within the overlapping area.

Source: Laws 1979, LB 251, § 17; Laws 1983, LB 22, § 11; Laws 2014, LB474, § 9; Laws 2017, LB97, § 19; Laws 2019, LB193, § 224.
Effective date September 1, 2019.

19-4032 Business improvement district; additional assessment or levy; when; procedure.

If, subsequent to the levy of taxes or assessments under the Business Improvement District Act, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such parcel would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such parcel by the city council taking into consideration the new and changed use of the property. Reassessments or changes in the rate of levy of assessments or taxes may be made by the city council after notice and hearing as provided in section 19-4030. The city council shall adopt a resolution of intention to change the rate of levy at least fifteen days prior to the hearing required for changes. This resolution shall specify the proposed change and shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 18; Laws 2019, LB193, § 225.
Effective date September 1, 2019.

19-4033 Special assessments or taxes; limitations; effect.

The total amount of special assessments or general business occupation taxes levied under the Business Improvement District Act shall not exceed the total costs and expenses of performing the authorized work. The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

Source: Laws 1979, LB 251, § 19; Laws 1983, LB 22, § 12; Laws 2015, LB168, § 17; Laws 2019, LB193, § 226.
Effective date September 1, 2019.

19-4034 Business improvement district; special assessment or business occupation tax; exceptions; maintenance, repair, or reconstruction; levy; procedure.

A city may levy a general business occupation tax, or a special assessment against the real estate located in a business improvement district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, including utility costs of any improvement or facility in the business improvement district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including utility costs of improvements or facilities which are authorized by the Business Improvement District Act, but which were not acquired or

constructed pursuant to the act, may be taxed or assessed as provided in the act. Any occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4030. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008 or which is exempt from tax under section 77-2704.24. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate located in the business improvement district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the business improvement district, whichever may be applicable as determined by the ordinance creating the business improvement district. However, if the city council finds that the method of assessment proposed in the ordinance creating the business improvement district does not provide a fair and equitable method of apportioning such costs, then it may assess the costs under such method as the city council finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real estate or businesses in the business improvement district; or

(2) After notice is given to the owners or businesses as provided in section 19-4030 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any business improvement district shall pay. The city council shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real estate in the business improvement district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4030 and shall state the total costs and percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Source: Laws 1979, LB 251, § 20; Laws 1983, LB 22, § 13; Laws 2014, LB474, § 10; Laws 2019, LB193, § 227.
Effective date September 1, 2019.

19-4035 Business improvement district; dissolution; procedure.

The city council may dissolve a business improvement district by ordinance after a hearing before the city council. The city council shall adopt a resolution of intention to dissolve the business improvement district at least fifteen days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

Source: Laws 1979, LB 251, § 21; Laws 2019, LB193, § 228.
Effective date September 1, 2019.

19-4036 Dissolved district; assets; disposition.

Upon dissolution of a business improvement district, any proceeds of any general business occupation tax or the special assessment, or assets acquired with such proceeds, shall be subject to disposition as the city council shall determine.

Source: Laws 1979, LB 251, § 22; Laws 2019, LB193, § 229.
Effective date September 1, 2019.

19-4037 Funds and grants; use.

Any city which has established one or more business improvement districts is authorized to receive, administer, and disburse donated funds or grants of federal or state funds for the purposes of and in the manner authorized by the Business Improvement District Act.

Source: Laws 1979, LB 251, § 23; Laws 2015, LB168, § 18; Laws 2019, LB193, § 230.
Effective date September 1, 2019.

ARTICLE 46**MUNICIPAL NATURAL GAS**

(Applicable to all except cities of the metropolitan class.)

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

Section

- 19-4629. Resolution of intent; contents.
- 19-4630. Resolution of intent; public hearing.
- 19-4632. Court of condemnation; establishment.
- 19-4633. Court of condemnation; procedure.
- 19-4634. Court of condemnation; powers and duties; costs.
- 19-4636. Appeal.
- 19-4638. Voter approval; effect.

(b) MUNICIPAL NATURAL GAS SYSTEM CONDEMNATION ACT

19-4629 Resolution of intent; contents.

(1) A resolution of intent pursuant to section 19-4628 shall describe the property subject to the proposed condemnation, including the types of property and facilities to be subject to the condemnation and the extent and amount of property to be appropriated. The resolution of intent shall set forth one or more of the following:

(a) A description of the acts and omissions of the utility regarding natural gas safety which the city believes have created or may create a material threat to the health and safety of the public in the city and a description of the nature of the threat;

(b) A description of the acts and omissions of the utility regarding the terms, conditions, and quality of natural gas service to natural gas ratepayers in the city which the city believes fail to meet generally accepted standards of customer service within the natural gas industry;

(c) A comparison of the rates for natural gas charged by the utility to ratepayers in the city and of the rates charged to similarly situated ratepayers in comparably sized cities in Nebraska and neighboring states which are served

by the same or different utilities, which comparison the city believes shows that the rates charged in the city are excessive; or

(d) A description of recent or contemporaneous events or disclosures regarding the utility, including, but not limited to, changes in ownership, corporate structure, financial stability, or debt rating or any other factor which the city believes indicates financial instability in the utility which may materially impair its ability to maintain appropriate levels of safety and consumer service in the city.

(2) If the resolution of intent contains provisions as set out in subdivision (1)(a) or (b) of this section, the resolution shall describe the efforts by the city to inform the utility of the utility's acts or omissions regarding safety or service and shall describe the opportunities afforded the utility to remedy the stated defects.

(3) The resolution of intent shall not contain any provision regarding nor make any references to any expected or anticipated revenue to be derived by the city in consequence of the city's condemnation or operation of the gas system.

Source: Laws 2002, LB 384, § 6; Laws 2019, LB193, § 231.
Effective date September 1, 2019.

19-4630 Resolution of intent; public hearing.

(1) A resolution of intent to pursue condemnation pursuant to section 19-4628 shall be presented to the governing body of the city at a regular meeting of such governing body. At that meeting the governing body may adopt the resolution of intent and, if it does so, shall set a time at least forty-five days after the date of the meeting at which the resolution of intent was adopted at which time the governing body of the city shall hold a public hearing.

(2) At the public hearing, the sole item of business to be conducted shall be the public hearing on the resolution of intent at which the public shall be permitted to comment on the proposed condemnation, the utility shall be permitted to respond to the statements set out in the resolution of intent and any comments made at the public hearing, and the governing body may act as provided in section 19-4631.

(3) The city clerk shall transmit a copy of the resolution of intent and notice of the date and time of the public hearing to the utility by United States registered mail with signature confirmation within seven days after the meeting at which the resolution of intent was adopted. At least thirty days prior to the public hearing, the city shall publish notice of the time and place of the public hearing and a summary of the resolution of intent in a legal newspaper published in or of general circulation in the city.

(4) The utility may present to the city a description of portions of the gas system which (a) are not described as part of the gas system being condemned by the city and (b) are served through the town border station of the city. The utility may require the city to include in its description of the gas system being condemned any or all of those portions of the system if the proposed condemnation would sever those portions of the system from the utility's distribution facilities and would require the utility to create new infrastructure to link these portions to its existing delivery system outside the city. If the utility chooses to require the city to include additional portions of the gas system in the descrip-

tion of the property being condemned, it shall do so prior to the adjournment of the public hearing.

Source: Laws 2002, LB 384, § 7; Laws 2019, LB193, § 232.
Effective date September 1, 2019.

19-4632 Court of condemnation; establishment.

Following the adoption of a motion pursuant to section 19-4631, including an override of any veto, if necessary, the city clerk shall transmit to the Chief Justice of the Supreme Court notice of the decision of the city to pursue condemnation of the gas system. The Supreme Court shall, within thirty days after the receipt of such notice, appoint three judges of the district court from three of the judicial districts of the state to constitute a court of condemnation to ascertain and find the value of the gas system being taken. The Supreme Court shall enter an order requiring the judges to attend as a court of condemnation at the county seat of the county in which the city is located, within such time as may be stated in the order, except upon stipulation by all necessary parties as to the value of the gas system filed with the Supreme Court prior to such date. The judges shall attend as ordered and at the first meeting shall select a presiding judge, organize, and proceed with the court's duties. The court may adjourn from time to time and shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city or the utility may desire to have made a party to the proceedings. If such time of appearance shall occur after any proceedings have begun, the proceedings shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, leaseholders, or other parties or persons claiming any interest in or lien upon the gas system, may be made parties to the proceedings. All parties shall be served with notice of the proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court, either by personal service or service by publication, and actual personal service of notice within or without the state shall supersede the necessity of notice by publication.

Source: Laws 2002, LB 384, § 9; Laws 2019, LB193, § 233.
Effective date September 1, 2019.

19-4633 Court of condemnation; procedure.

In all proceedings before it, the court of condemnation shall appoint a reporter of its proceedings who shall report and preserve all evidence introduced before it. The clerk of the district court, in the county where the city is located, shall attend upon the court of condemnation and perform the duties of the clerk thereof, as the court of condemnation may direct. The sheriff of the county or any of his or her deputies shall attend upon the court of condemnation and shall have power to serve summonses, subpoenas, and all other orders or papers ordered to be served by the court. In case of a vacancy on the court, the vacancy shall be filled by the Supreme Court if the vacancy occurs while the Supreme Court is in session, and if it occurs while the Supreme Court is not in session, then by the Chief Justice. The judges constituting the court of condemnation shall be paid by the city a per diem for their services in an amount to be

established by rule of the Supreme Court and the city shall pay their necessary traveling expenses, accommodation bills, and all other necessary expenses incurred while in attendance upon the sittings of the court of condemnation, with reimbursement for expenses to be made as provided in sections 81-1174 to 81-1177. The city shall pay the reporter that is appointed by the court of condemnation the amount that is set by such court. The sheriff shall serve all summonses, subpoenas, or other orders or papers ordered issued or served by the court of condemnation at the same rate and compensation for which he or she serves like papers issued by the district court, but shall account to the county for all compensation as required of him or her under the law governing his or her duties as sheriff.

Source: Laws 2002, LB 384, § 10; Laws 2019, LB193, § 234.
Effective date September 1, 2019.

19-4634 Court of condemnation; powers and duties; costs.

(1) In ascertaining the value of the gas system, the court of condemnation shall have full power to summon witnesses, administer oaths, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any portion of the gas system. When part of the gas system appropriated under the Municipal Natural Gas System Condemnation Act extends beyond the territory within which the city exercising the power of eminent domain has a right to operate the gas system, the court of condemnation, in determining the damages caused by the appropriation, shall take into consideration the fact that the portion of the gas system beyond that territory is being detached and not appropriated by the city, and the court of condemnation shall award damages by reason of the detachment and the destruction in value and usefulness of the detached and unappropriated property as it will remain and be left after the detachment and appropriation. The court of condemnation shall have all the necessary powers and perform all the necessary duties in the condemnation and ascertainment of the value and in making an award of the value of the gas system.

(2) The court of condemnation shall have power to apportion the costs of the proceedings before it between the city and the utility and the city shall provide for and pay the costs as ordered by such court. The city shall make provisions for the necessary funds and expenses to carry on the proceedings of the court of condemnation while the proceedings are in progress. If the governing body of the city elects to abandon the condemnation proceedings, the city shall pay all the costs made before the court of condemnation.

(3) If the services of expert witnesses or attorneys are secured by the utility, their fees or compensation as billed to the utility are to be taxed and paid as costs by the city to the extent that the court of condemnation determines that the fees and compensation sought (a) reflect the prevailing industry or professional charges for such services in cases of the size involved in the condemnation and (b) were reasonably necessary to a just and accurate determination of the value of the gas system. The costs of any appeal shall be adjudged against the party defeated in the appeal in the same degree and manner as is done under the general court practice relating to appellate proceedings.

Source: Laws 2002, LB 384, § 11; Laws 2019, LB193, § 235.
Effective date September 1, 2019.

19-4636 Appeal.

Upon the hearing of an appeal pursuant to section 19-4635 in the district court, judgment shall be pronounced, as in ordinary cases, for the value of the gas system. The city or utility may appeal the judgment to the Supreme Court. All actions and proceedings under the Municipal Natural Gas System Condemnation Act which are heard by the district court or the Supreme Court shall be expedited for hearing and decision by the appropriate court as soon as the issues and parties are properly before such court. Such proceedings and actions shall be preferred over all other civil cases irrespective of their position on the calendar.

Source: Laws 2002, LB 384, § 13; Laws 2019, LB193, § 236.
Effective date September 1, 2019.

19-4638 Voter approval; effect.

If an election pursuant to section 19-4637 at which the question is submitted is a special election and sixty percent of the votes cast upon such proposition are in favor, or if such election at which the question is submitted is a general election and a majority of the votes cast upon such proposition are in favor, then the officer possessing the power and duty to ascertain and declare the result of the election shall certify the result immediately to the governing body of the city. The governing body of the city may then proceed to tender the amount of the value and award made by the court of condemnation, the district court, or the Supreme Court to the utility owning the gas system and shall have the right and power to take immediate possession of the gas system upon the tender.

Source: Laws 2002, LB 384, § 15; Laws 2019, LB193, § 237.
Effective date September 1, 2019.

**ARTICLE 47
BASEBALL**

Section

19-4701. City of metropolitan class or primary class; powers.

19-4701 City of metropolitan class or primary class; powers.

A city of the metropolitan class or primary class may acquire, purchase, and operate a professional baseball organization.

Source: Laws 1991, LB 795, § 9; Laws 2019, LB193, § 238.
Effective date September 1, 2019.

**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 class, city of the 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 of trustees 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 of trustees 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 class, city of the 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 of trustees.

(6) Except for a willful or deliberate failure to cause notice to be given, the city of the first class, city of the 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 of trustees.

(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 class, city of the 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; Laws 2019, LB193, § 239.
Effective date September 1, 2019.

CHAPTER 20

CIVIL RIGHTS

Article.

1. Individual Rights.
 - (b) Persons with Disabilities. 20-126 to 20-131.04.

ARTICLE 1

INDIVIDUAL RIGHTS

(b) PERSONS WITH DISABILITIES

Section

- 20-126. Statement of policy.
- 20-128. Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.
- 20-131.01. Full and equal enjoyment of housing accommodations; statement of policy.
- 20-131.04. Service animal; access to housing accommodations; terms and conditions.

(b) PERSONS WITH DISABILITIES

20-126 Statement of policy.

It is the policy of this state to encourage and enable blind, visually handicapped, deaf or hard of hearing, or physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

Source: Laws 1971, LB 496, § 1; R.S.Supp.,1971, § 43-633; Laws 1980, LB 932, § 1; Laws 1997, LB 254, § 2; Laws 2019, LB248, § 1. Effective date September 1, 2019.

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 deaf or hard of hearing 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 deaf or hard of hearing 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 deaf or hard of hearing 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; Laws 2019, LB248, § 2. Effective date September 1, 2019.

20-131.01 Full and equal enjoyment of housing accommodations; statement of policy.

It is the intent of the Legislature that blind persons, visually handicapped persons, deaf or hard of hearing persons, and other physically disabled persons shall be entitled to full and equal access to all housing accommodations offered for rent, lease, or compensation in this state.

Source: Laws 1975, LB 83, § 1; Laws 1980, LB 932, § 5; Laws 2019, LB248, § 3.
Effective date September 1, 2019.

20-131.04 Service animal; access to housing accommodations; terms and conditions.

Every totally or partially blind person, deaf or hard of hearing 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, deaf or hard of hearing 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; Laws 2019, LB248, § 4.
Effective date September 1, 2019.

CHAPTER 21

CORPORATIONS AND OTHER COMPANIES

Article.

1. Nebraska Uniform Limited Liability Company Act.
 - (g) Dissolution and Winding Up. 21-147.
 - (l) Fees. 21-192.
5. Nebraska Uniform Protected Series Act.
 - (a) General Provisions. 21-507.
 - (b) Establishing Protected Series. 21-509 to 21-514.
 - (c) Associated Asset; Associated Member; Protected-Series Transferable Interest; Management; Right of Information. 21-517.
 - (d) Limitation on Liability and Enforcement of Claims. 21-520 to 21-523.
 - (e) Dissolution and Winding Up of Protected Series. 21-525, 21-526.
 - (f) Entity Transactions Restricted. 21-528 to 21-534.
 - (g) Foreign Protected Series. 21-537.
 - (h) Miscellaneous Provisions. 21-539, 21-541.
17. Credit Unions.
 - (a) Credit Union Act. 21-17,115.

ARTICLE 1

NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

(g) DISSOLUTION AND WINDING UP

Section

21-147. Events causing dissolution; rescission; procedure.

(l) FEES

21-192. Fees.

(g) DISSOLUTION AND WINDING UP

21-147 Events causing dissolution; rescission; procedure.

(RULLCA 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.

(c) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company has become effective, the district court has entered an order under subdivision (a)(4) of this section dissolving the company, or the Secretary of State has administratively dissolved the company under section 21-151.

(d) Rescinding dissolution under this section requires:

(1) the consent of all the members; and

(2) if the limited liability company has delivered to the Secretary of State for filing a statement of dissolution under section 21-148 and:

(A) the statement has not become effective, delivery to the Secretary of State for filing of a statement of withdrawal under section 21-121 applicable to the statement of dissolution; or

(B) if the statement of dissolution has become effective, delivery to the Secretary of State for filing of a statement of rescission stating the name of the company and that dissolution has been rescinded under this section.

(e) If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) subject to subdivision (e)(3) of this section, any liability incurred by the company after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Source: Laws 2010, LB888, § 47; Laws 2019, LB78, § 1.

Operative date September 1, 2019.

(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, and except that the filing fee for filing a protected-series designation under section 21-509 shall be one hundred dollars for each protected series stated plus such recording fees and ten dollars for a certificate and the filing fee for an application for a certificate of authority to do business in this state as a foreign

protected series under section 21-537 shall be one hundred dollars plus such recording fees and ten dollars for a certificate.

(2) The filing fee for filing a statement of change of address for an agent for service of process under section 21-114 shall be ten dollars for each limited liability company or foreign limited liability company for which the agent is designated plus the recording fees set forth in subdivision (4) of section 33-101.

(3) The filing fee for filing a statement of designation change under section 21-510 shall be ten dollars for each of the series limited liability company's protected series plus the recording fees set forth in subdivision (4) of section 33-101.

(4) The filing fee for the filing of a biennial report under section 21-514 shall be ten dollars for the series limited liability company and ten dollars for each of the series limited liability company's protected series.

(5) 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.

(6) The fee for an application for reinstatement more than five years after the effective date of an administrative dissolution shall be five hundred dollars.

(7) 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.

(8) 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; Laws 2014, LB753, § 2; Laws 2015, LB279, § 2; Laws 2019, LB78, § 2.
Operative date January 1, 2021.

ARTICLE 5

NEBRASKA UNIFORM PROTECTED SERIES ACT

(a) GENERAL PROVISIONS

Section

21-507. Additional limitations on operating agreement.

(b) ESTABLISHING PROTECTED SERIES

21-509. Protected series designation; amendment.

21-510. Name.

21-513. Certificate of existence for protected series; certificate of authority for foreign protected series.

21-514. Information required in biennial report; effect of failure to provide.

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

21-517. Protected-series transferable interest.

(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

21-520. Limitations on liability.

21-521. Claim seeking to disregard limitation of liability.

21-522. Remedies of judgment creditor of associated member or protected-series transferee.

21-523. Enforcement against nonassociated asset.

Section

(e) DISSOLUTION AND WINDING UP OF PROTECTED SERIES

21-525. Winding up dissolved protected series.

21-526. Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

(f) ENTITY TRANSACTIONS RESTRICTED

21-528. Protected series; prohibited acts.

21-529. Series limited liability company; prohibited acts.

21-532. Articles of merger.

21-534. Application of section 21-523 after merger.

(g) FOREIGN PROTECTED SERIES

21-537. Authorization of foreign protected series.

(h) MISCELLANEOUS PROVISIONS

21-539. Uniformity of application and construction.

21-541. Repealed. Laws 2019, LB78, § 24.

(a) GENERAL PROVISIONS

21-507 Additional limitations on operating agreement.

(a) An operating agreement may not vary the effect of:

(1) this section;

(2) section 21-503;

(3) subsection (a) of section 21-504;

(4) subsection (b) of section 21-504 to provide a protected series a power beyond the powers the Nebraska Uniform Limited Liability Company Act provides a limited liability company;

(5) subsection (c) or (d) of section 21-504;

(6) section 21-505;

(7) section 21-506;

(8) section 21-508;

(9) section 21-509, except to vary the manner in which a limited liability company approves establishing a protected series;

(10) section 21-510;

(11) section 21-515;

(12) section 21-516;

(13) subsection (a) or (b) of section 21-517;

(14) subsection (c) or (f) of section 21-518;

(15) section 21-520, except to decrease or eliminate a limitation of liability stated in section 21-520;

(16) section 21-521;

(17) section 21-522;

(18) section 21-523;

(19) subdivisions (1), (4), and (5) of section 21-524;

(20) section 21-525, except to designate a different person to manage winding up;

(21) section 21-526;

(22) sections 21-527 to 21-534;

(23) sections 21-535 to 21-538;

(24) section 21-542; or

(25) a provision of the Nebraska Uniform Protected Series Act pertaining to:

(A) registered agents; or

(B) the Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under the act.

(b) An operating agreement may not unreasonably restrict the duties and rights under section 21-519 but may impose reasonable restrictions on the availability and use of information obtained under section 21-519 and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

Source: Laws 2018, LB1121, § 8; Laws 2019, LB78, § 3.
Operative date January 1, 2021.

(b) ESTABLISHING PROTECTED SERIES

21-509 Protected series designation; amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish one or more protected series, a limited liability company shall deliver to the Secretary of State for filing a protected-series designation, signed by the company, stating the name of the company and the name or names of the protected series to be established.

(c) A protected series is established when the protected-series designation takes effect under section 21-121.

(d) To amend a protected-series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name or names of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under section 21-121.

Source: Laws 2018, LB1121, § 10; Laws 2019, LB78, § 4.
Operative date January 1, 2021.

21-510 Name.

(a) Except as otherwise provided in subsection (b) of this section, the name of a protected series must be distinguishable in the records of the Secretary of State from:

(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.

(b) The name of a protected series of a series limited liability company must:

(1) begin with the name of the company, including any word or abbreviation required by section 21-108; and

(2) contain the phrase Protected Series or protected series or the abbreviation P.S. or PS.

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for the company's protected series, changing the name of each protected series to comply with this section.

Source: Laws 2018, LB1121, § 11; Laws 2019, LB78, § 5.
Operative date January 1, 2021.

21-513 Certificate of existence for protected series; certificate of authority for foreign protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of existence for a protected series of a series limited liability company or a certificate of authority for a foreign protected series if:

(1) in the case of a protected series:

(A) no statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) the company has delivered to the Secretary of State for filing the most recent biennial report required by section 21-125 and the report includes the name of the protected series, unless:

(i) when the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) after the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) in the case of a foreign protected series, it is authorized to do business in this state.

(b) A certificate issued under subsection (a) of this section must state:

(1) in the case of a protected series:

(A) the name of the protected series of the series limited liability company and the name of the company;

(B) that the requirements of subsection (a) of this section are met;

(C) the date the protected-series designation pertaining to the protected series took effect; and

(D) if a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) in the case of a foreign protected series, that it is authorized to do business in this state;

(3) that the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) payment is reflected in the records of the Secretary of State; and

(B) nonpayment affects the good standing of the protected series; and

(4) other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

Source: Laws 2018, LB1121, § 14; Laws 2019, LB78, § 6.
Operative date January 1, 2021.

21-514 Information required in biennial report; effect of failure to provide.

(a) In the biennial report required by section 21-125, a series limited liability company shall include the name of each protected series of the company:

(1) for which the company has previously delivered to the Secretary of State for filing a protected-series designation; and

(2) which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) of this section with regard to a protected series prevents issuance of a certificate of existence pertaining to the protected series but does not otherwise affect the protected series.

Source: Laws 2018, LB1121, § 15; Laws 2019, LB78, § 7.
Operative date January 1, 2021.

(c) ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

21-517 Protected-series transferable interest.

(a) A protected-series transferable interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series transferable interests in the protected series.

(c) In addition to acquiring a protected-series transferable interest under subsection (b) of this section, a series limited liability company may acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

(d) Except for subdivision (a)(3) of section 21-508, a provision of the Nebraska Uniform Protected Series Act which applies to a protected-series transferee of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series transferable interest of the protected series.

Source: Laws 2018, LB1121, § 18; Laws 2019, LB78, § 8.
Operative date January 1, 2021.

(d) LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS

21-520 Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) a protected series of a series limited liability company solely by reason of being or acting as:

(A) an associated member, protected-series manager, or protected-series transferee of the protected series; or

(B) a member, manager, or a transferee of the company; or

(2) a series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to section 21-523, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) being or acting as a protected-series manager of the protected series;

(B) having the protected series manage the company; or

(C) owning a protected-series transferable interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

(A) being a protected series of the company;

(B) being or acting as a manager of the company or a protected-series manager of another protected series of the company; or

(C) having the company or another protected series of the company be or act as a protected-series manager of the protected series.

Source: Laws 2018, LB1121, § 21; Laws 2019, LB78, § 9.

Operative date January 1, 2021.

21-521 Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b) of this section, a claim seeking to disregard a limitation in section 21-520 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground to disregard a limitation in subsection (a) of section 21-520 but may be a ground to disregard a limitation in subsection (b) of section 21-520.

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in section 21-520, if:

(1) the claimant is a resident of this state or doing business or authorized to do business in this state; or

(2) the claim is to establish or enforce a liability arising under law of this state other than the Nebraska Uniform Protected Series Act or from an act or omission in this state.

Source: Laws 2018, LB1121, § 22; Laws 2019, LB78, § 10.
Operative date January 1, 2021.

21-522 Remedies of judgment creditor of associated member or protected-series transferee.

Section 21-142 applies to a judgment creditor of:

(1) an associated member or protected-series transferee of a protected series; or

(2) a series limited liability company, to the extent the company owns a protected-series transferable interest of a protected series.

Source: Laws 2018, LB1121, § 23; Laws 2019, LB78, § 11.
Operative date January 1, 2021.

21-523 Enforcement against nonassociated asset.

(a) In this section:

(1) Enforcement date means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to subsection (b) of section 21-534, incurrence date means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) was a nonassociated asset of the protected series on the incurrence date; or

(B) is a nonassociated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) was a nonassociated asset of the company on the incurrence date; or

(B) is a nonassociated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) was a nonassociated asset of the other protected series on the incurrence date; or

(B) is a nonassociated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than the Nebraska Uniform Protected Series Act permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) of this section as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

(1) the asset is real or tangible property located in this state;

(2) the claimant is a resident of this state or doing business or authorized to do business in this state, or the claim under this section is to enforce a judgment, or to seek a prejudgment remedy, pertaining to a liability arising from law of this state other than the Nebraska Uniform Protected Series Act or an act or omission in this state; and

(3) the asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by section 21-515.

Source: Laws 2018, LB1121, § 24; Laws 2019, LB78, § 12.

Operative date January 1, 2021.

(e) DISSOLUTION AND WINDING UP OF PROTECTED SERIES

21-525 Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) of this section and in accordance with section 21-508:

(1) a dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under sections 21-147 to 21-154, subject to the same requirements and conditions and with the same effects; and

(2) judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under subsection (e) of section 21-148.

(b) When a protected series of a series limited liability company dissolves, the company shall deliver to the Secretary of State for filing a statement of protected-series dissolution stating the name of the company and the protected series and that the protected series is dissolved. The filing of the statement by

the Secretary of State has the same effect as the filing by the Secretary of State of a statement of dissolution under subdivision (d)(2)(A) of section 21-103.

(c) When a protected series of a series limited liability company has completed winding up, the company may deliver to the Secretary of State for filing a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement by the Secretary of State has the same effect as the filing by the Secretary of State of a statement of termination under subdivision (d)(2)(B) of section 21-103.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

Source: Laws 2018, LB1121, § 26; Laws 2019, LB78, § 13.

Operative date January 1, 2021.

21-526 Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

If a series limited liability company that has been administratively dissolved is reinstated, or a series limited liability company that voluntarily dissolved rescinds its dissolution:

(1) each protected series of the company ceases winding up; and

(2) section 21-152 applies to each protected series of the company in accordance with section 21-508.

Source: Laws 2018, LB1121, § 27; Laws 2019, LB78, § 14.

Operative date January 1, 2021.

(f) ENTITY TRANSACTIONS RESTRICTED

21-528 Protected series; prohibited acts.

A protected series may not:

(1) be an acquiring, acquired, converting, converted, merging, or surviving organization;

(2) participate in a domestication; or

(3) be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, conversion, or domestication.

Source: Laws 2018, LB1121, § 29; Laws 2019, LB78, § 15.

Operative date January 1, 2021.

21-529 Series limited liability company; prohibited acts.

A series limited liability company may not be:

(1) an acquiring, acquired, converting, converted, domesticating, or domesticated organization; or

(2) except as otherwise provided in section 21-530, a party to or the surviving company of a merger.

Source: Laws 2018, LB1121, § 30; Laws 2019, LB78, § 16.

Operative date January 1, 2021.

21-532 Articles of merger.

In a merger under section 21-530, the articles of merger must:

- (1) comply with sections 21-171 to 21-174; and
- (2) include as an attachment the following records, each to become effective when the merger becomes effective:

(A) for a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) for a protected series of a nonsurviving company which after the merger will be a relocated protected series:

(i) a statement of relocation signed by the nonsurviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) a statement of protected-series designation signed by the surviving company; and

(C) for a protected series being established by the surviving company as a result of the merger, a statement of designation signed by the company.

Source: Laws 2018, LB1121, § 33; Laws 2019, LB78, § 17.

Operative date January 1, 2021.

21-534 Application of section 21-523 after merger.

(a) A creditor's right that existed under section 21-523 immediately before a merger under section 21-530 may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a nonsurviving company:

(A) may be asserted against an asset of the nonsurviving company which vested in the surviving company as a result of the merger; and

(B) does not otherwise change.

(3) Subject to subsection (b) of this section, the following rules apply:

(A) In addition to the remedy stated in subdivision (a)(1) of this section, a creditor with a right under section 21-523 which existed immediately before the merger against a nonsurviving company or a relocated protected series may assert the right against:

(i) an asset of the surviving company, other than an asset of the nonsurviving company which vested in the surviving company as a result of the merger;

(ii) an asset of a continuing protected series; or

(iii) an asset of a protected series established by the surviving company as a result of the merger;

(iv) if the creditor's right was against an asset of the nonsurviving company, an asset of a relocated series; or

(v) if the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in subdivision (a)(2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) an asset of a relocated protected series; or

(ii) an asset of a nonsurviving company which vested in the surviving company as a result of the merger.

(b) For the purposes of subdivision (a)(3) of this section and subdivisions (b)(1)(A), (b)(2)(A), and (b)(3)(A) of section 21-523, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under section 21-530 does not affect the manner in which section 21-523 applies to a liability incurred after the merger.

Source: Laws 2018, LB1121, § 35; Laws 2019, LB78, § 18.
Operative date January 1, 2021.

(g) FOREIGN PROTECTED SERIES

21-537 Authorization of foreign protected series.

(a) Except as otherwise provided in this section and subject to sections 21-521 and 21-523, the law of this state governing the authorization of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for a certificate of authority to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company along with a certificate of existence or equivalent for the foreign protected series issued in its jurisdiction of formation, except that if the jurisdiction of formation of the foreign series limited liability company does not provide for issuance of a certificate of existence or equivalent for a foreign protected series, the application must include a certificate of existence or equivalent for the foreign series limited liability company and in that case the foreign protected series is deemed to be in existence as long as the foreign series limited liability company is in existence or good standing in its jurisdiction of formation; and

(2) if the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) each other foreign protected series of the foreign series limited liability company; and

(B) the foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company.

(c) The name of a foreign protected series applying for a certificate of authority to do business in this state must comply with section 21-108 and subsection (b) of section 21-510 and may do so using subsection (d) of section 21-108, if the fictitious name complies with section 21-108 and subsection (b) of section 21-510.

(d) A foreign protected series that has been issued a certificate of authority to do business in this state pursuant to this section shall file an amendment to its application if there is any change in the information required by subsection (b) of this section.

Source: Laws 2018, LB1121, § 38; Laws 2019, LB78, § 19.
Operative date January 1, 2021.

(h) MISCELLANEOUS PROVISIONS

21-539 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Protected Series Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the Uniform Protected Series Act.

Source: Laws 2018, LB1121, § 40; Laws 2019, LB78, § 20.
Operative date January 1, 2021.

21-541 Repealed. Laws 2019, LB78, § 24.

Operative date January 1, 2021.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section

21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

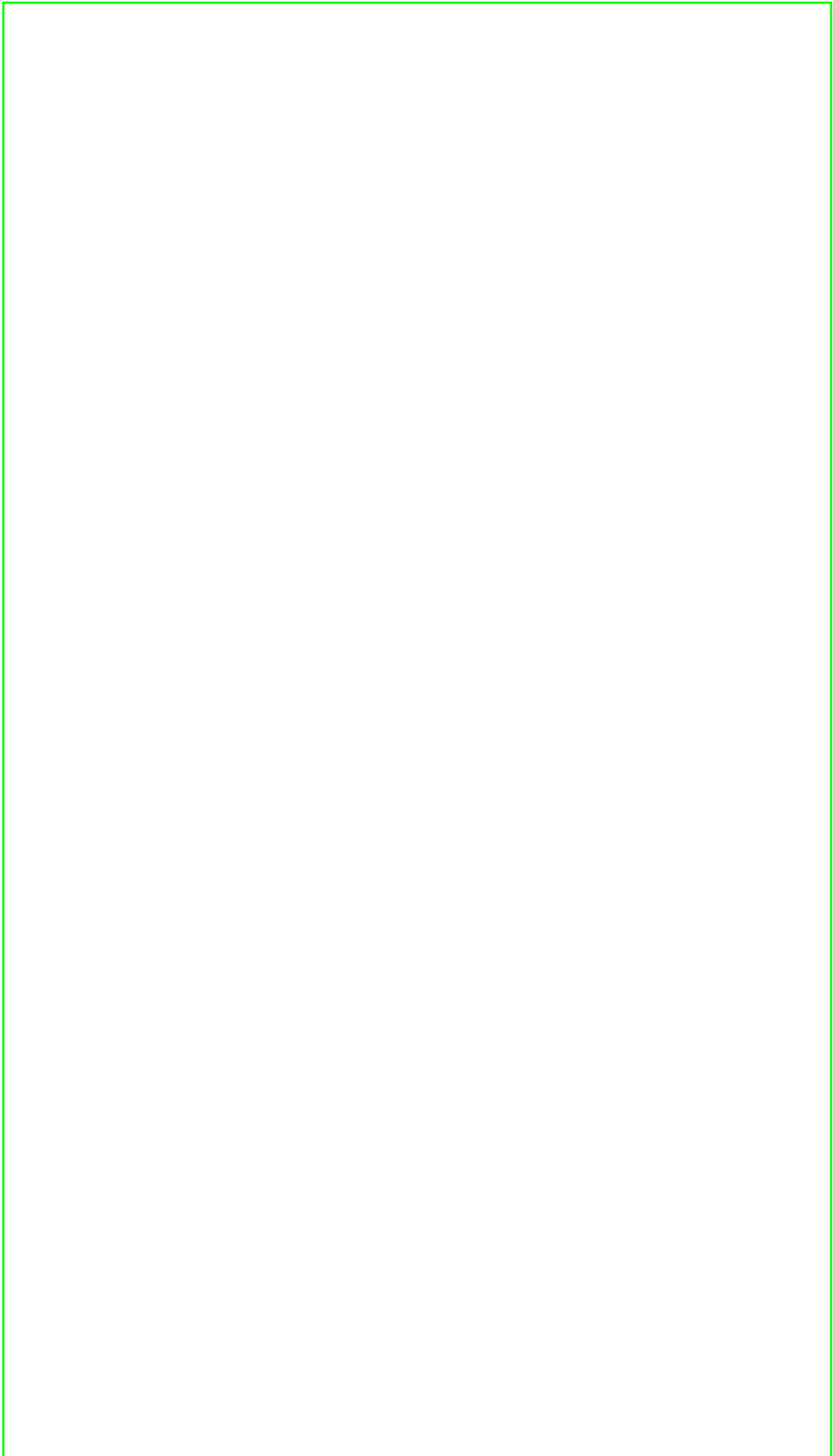
Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2019, 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

CREDIT UNIONS**§ 21-17,115**

1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14; Laws 2011, LB74, § 5; Laws 2012, LB963, § 22; Laws 2013, LB213, § 13; Laws 2014, LB712, § 3; Laws 2015, LB286, § 3; Laws 2016, LB676, § 3; Laws 2017, LB140, § 149; Laws 2018, LB812, § 9; Laws 2019, LB258, § 13.

Effective date March 8, 2019.



CHAPTER 23

COUNTY GOVERNMENT AND OFFICERS

Article.

- 1. General Provisions.
 - (b) Powers and Duties of County Board. 23-107.01.
 - (c) Commissioner System. 23-148, 23-149.
 - (e) County Zoning. 23-174.03.
- 2. Counties under Township Organization.
 - (a) Adoption of Township Organization; General Provisions. 23-202, 23-206.
 - (d) Discontinuance of Township Organization. 23-293.
- 3. Provisions Applicable to Various Projects.
 - (i) Street Improvement. 23-339.
- 4. County Civil Service Commission Act. 23-401 to 23-418.
- 9. Budget.
 - (a) Applicable Only to Counties. 23-906.
- 11. Salaries of County Officers. 23-1112, 23-1112.01.
- 15. Register of Deeds. 23-1503.01.
- 23. County Employees Retirement. 23-2306 to 23-2331.
- 25. Civil Service System.
 - (a) Counties of More than 400,000 Inhabitants. 23-2501 to 23-2516. Transferred.
- 32. County Assessor. 23-3211.

ARTICLE 1

GENERAL PROVISIONS

(b) POWERS AND DUTIES OF COUNTY BOARD

Section

23-107.01. Real estate owned by county; sale or lease; terms and procedures.

(c) COMMISSIONER SYSTEM

23-148. Commissioners; number; election; when authorized.

23-149. Commissioners; number; petition to change; resolution by county board; election; ballot; form.

(e) COUNTY ZONING

23-174.03. County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; filing of plat; effect.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-107.01 Real estate owned by county; sale or lease; terms and procedures.

(1)(a) Except as provided in subsection (2) of this section and section 80-329, any county board has power to sell or lease real estate owned by the county and not required for county purposes at a fair market value regardless of the value of the property. The county board of such county shall hold an open and public hearing prior to any such sale or lease at which any interested party may appear and speak for or against the sale or lease and raise any issue regarding the fair market value of the property as determined by the county board. Public notice of any such public hearing shall be run once each week for two consecutive weeks prior to the hearing date in any newspaper or legal publication distributed generally throughout the county.

(b) The county board shall set a date of sale which shall be within two months of the date of public hearing pursuant to subdivision (1)(a) of this section and shall offer such real estate for sale or lease to the highest bidder.

(c) The county board shall cause to be printed and published once at least ten days prior to the sale or lease in a legal newspaper in the county an advertisement for bids on the property to be sold or leased. The advertisement shall state the legal description and address of the real estate and that the real estate shall be sold or leased to the highest bidder.

(d) If the county board receives no bids or if the bids received are substantially lower than the fair market value, the county board may negotiate a contract for sale or lease of the real estate if such negotiated contract is in the best interests of the county.

(2) A county board may, by majority vote, sell real estate owned by the county in fee simple to another political subdivision in fee simple in such manner and upon such terms and conditions as may be deemed in the best interest of the county. A county board shall cause to be printed and published at least thirty days prior to the sale in a legal newspaper in the county a notice of the intent to sell county real estate to another political subdivision. The notice shall state the legal description and address of the real estate to be sold.

Source: Laws 1975, LB 125, § 2; Laws 1976, LB 805, § 1; Laws 1979, LB 187, § 93; Laws 1980, LB 184, § 10; Laws 1997, LB 396, § 1; Laws 2019, LB525, § 1.
Effective date September 1, 2019.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than four hundred thousand inhabitants as determined by the most recent federal decennial census shall consist of three persons except as follows:

(1) Pursuant to petitions filed or a vote of the county board under section 23-149, the registered voters in any county containing not more than four hundred thousand inhabitants as determined by the most recent federal decennial census 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 sections 32-567 and 32-574 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; Laws 2015, LB575, § 3; Laws 2016, LB742, § 3; Laws 2019, LB411, § 23.
Operative date September 1, 2019.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

23-149 Commissioners; number; petition to change; resolution by county board; election; ballot; form.

(1)(a) 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.

(b) In counties not under township organization, the county board may, by majority vote of all members, adopt a resolution for the submission of the question regarding the number of commissioners on the county board.

(2) When the petition or petitions or the resolution is filed with the election commissioner or county clerk not less than seventy days before the date of any general election, the election commissioner or county clerk 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; Laws 2019, LB411, § 24.

Operative date September 1, 2019.

(e) COUNTY ZONING

23-174.03 County zoning; cities of the primary class; subdivision and platting into lots and streets; approval requirements; filing of plat; effect.

(1) No owner of any real estate located in a county in which is located a city of the primary class, except within the area over which subdivision jurisdiction has been granted to any city or village, and such city or village is exercising such jurisdiction, shall be permitted to subdivide, plat, or lay out such real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained the approval thereof by the county board of such county. In lieu of approval by the county board, the county board may designate specific types of plats which may be

approved by the county planning commission or the planning director. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the county board, the county planning commission, or the planning director of such county. Such a county shall have authority within the area described in this subsection (a) to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development, except that the county shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area, (b) to prescribe standards for laying out subdivisions in harmony with the comprehensive plan, (c) to require the installation of improvements by the owner or by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements, and (d) to require the dedication of land for public purposes.

(2) For purposes of this section, subdivision means the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

(3) Subdivision plats shall be approved by the county planning commission on recommendation by the planning director and county engineer and may be submitted to the county board for its consideration and action. The county board may withhold approval of a plat until the county engineer has certified that the improvements required by the regulations have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the county or until public improvement districts are created. The county board may provide procedures in land subdivision regulation for appeal by any person aggrieved by any action of the county planning commission or planning director.

(4) Any plat shall, after being filed with the register of deeds, be equivalent to a deed in fee simple absolute to the county, from the owner, of such portion of the land as is therein set apart for public use.

Source: Laws 1961, c. 87, § 8, p. 303; Laws 1978, LB 186, § 12; Laws 1980, LB 61, § 3; Laws 2005, LB 9, § 1; Laws 2019, LB525, § 2. Effective date September 1, 2019.

ARTICLE 2

COUNTIES UNDER TOWNSHIP ORGANIZATION

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section

23-202. Township organization; petition; filing; election.

23-206. Supervisor districts; cities and villages.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-293. Township organization; discontinuance; procedure.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-202 Township organization; petition; filing; 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 organiza-

tion. 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) The petition or petitions shall be filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the petitioners wish to have the question submitted for a vote. If such petition or petitions are filed in conformance with this subsection, the question shall be submitted to the registered voters at the next general election held after the filing of the petition or 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; Laws 2019, LB411, § 25.
Operative date September 1, 2019.

Cross References

Election Act, see section 32-101.

23-206 Supervisor districts; cities and villages.

In the event any city having one thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall have enough inhabitants to form one supervisor district, then such city shall constitute one district, or in case the number of inhabitants is fewer than the number in the other districts, then so much contiguous territory shall be added to such city to give it sufficient inhabitants for one supervisor district. Villages may be enumerated with general districts, counting all the inhabitants therein as being within the districts wherein such town or village is situated. No village, or any part thereof, shall be included in or made a part of any supervisor district containing a city having one thousand inhabitants or more as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, or containing any part of such city.

Source: Laws 1895, c. 28, § 6, p. 133; R.S.1913, § 992; Laws 1917, c. 17, § 2, p. 82; C.S.1922, § 892; C.S.1929, § 26-206; R.S.1943, § 23-206; Laws 2019, LB67, § 5.
Effective date September 1, 2019.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

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. The petition or petitions shall be filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the petitioners wish to have the question submitted for a vote. If such petition or

petitions are filed in conformance with this subsection, the question shall be submitted to the registered voters at the next general election held after the filing of the petition or petitions.

(2) In counties under township organization, the county board may, by a resolution supported by a majority of the county board, submit the question of discontinuance of township organization to the registered voters of the county. If such resolution is filed in the office of the election commissioner or county clerk by September 1 of the year of the general election at which the board wishes to have the question submitted for a vote, the question shall be submitted to the registered voters at the next general election held 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; Laws 2019, LB411, § 26.
Operative date September 1, 2019.

ARTICLE 3

PROVISIONS APPLICABLE TO VARIOUS PROJECTS

(i) STREET IMPROVEMENT

Section
23-339. Street improvement; county aid; when authorized.

(i) STREET IMPROVEMENT

23-339 Street improvement; county aid; when authorized.

The county board of any county in which any city or cities are located having at least twenty-five thousand inhabitants but fewer than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census is hereby authorized and empowered, whenever the road fund or funds of such county will warrant it, to aid in the grading, paving, or otherwise improving of any street, avenue, or boulevard leading into such city and within the corporate limits thereof, by providing for the payment of not exceeding one-half of the cost of such grading, and not exceeding the cost of the paving of intersections. It shall also be authorized and empowered to grade, pave, or otherwise improve any street, avenue, boulevard, or road, or any portion thereof leading into or adjacent to any such city outside, or partly inside and partly outside the corporate limits thereof, including any portion thereof leading into or across any village or town, and for such improvements outside of the corporate limits of any such city as herein authorized and directed.

Source: Laws 1911, c. 25, § 1, p. 171; R.S.1913, § 1111; C.S.1922, § 1045; C.S.1929, § 26-739; R.S.1943, § 23-339; Laws 2019, LB67, § 6.
Effective date September 1, 2019.

ARTICLE 4
COUNTY CIVIL SERVICE COMMISSION ACT

Section

- 23-401. Act, how cited.
- 23-402. Purpose of act.
- 23-403. Terms, defined.
- 23-404. Civil service commission; formation.
- 23-405. Commission; members; qualifications; number; election; vacancy; how filled.
- 23-406. Commission; members; compensation; expenses.
- 23-407. Commission; meetings; notice; rules of procedure, adopt; chairperson.
- 23-408. Commission; powers; duties.
- 23-409. Commission; salary and pay plans for employees; recommend.
- 23-410. Employees; status.
- 23-411. Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.
- 23-412. Employee; discharged, suspended, demoted; appeal; hearing; order; effect.
- 23-413. Commission; subpoena, oaths, production of records; powers.
- 23-414. Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.
- 23-415. Chief deputy or deputy; removal; effect on salary.
- 23-416. Human resources director; qualifications; duties; personnel records.
- 23-417. Commission; appeals; district court; procedure.
- 23-418. Act, how construed.

23-401 Act, how cited.

Sections 23-401 to 23-418 shall be known and may be cited as the County Civil Service Commission Act.

Source: Laws 2019, LB411, § 1.

Operative date September 1, 2019.

23-402 Purpose of act.

The purpose of the County Civil Service Commission Act is to guarantee to all citizens a fair and equal opportunity for employment in the county offices governed by the act and to establish conditions of employment and to promote economy and efficiency in such offices. In addition, the purpose of the act is to establish a system of personnel administration that meets the social, economic, and program needs of county offices. Such system shall provide the means to recruit, select, develop, and maintain an effective and responsive workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, and other related matters. All appointments and promotions under the act shall be made based on merit and fitness.

Source: Laws 1971, LB 921, § 1; R.S.1943, (2012), § 23-2501; Laws 2019, LB411, § 2.

Operative date September 1, 2019.

23-403 Terms, defined.

As used in the County Civil Service Commission Act, unless the context otherwise requires:

(1) Employees means all county employees of the county. Employees does not include part-time employees, employees subject to the state personnel service, court-appointed employees, employees of the county attorney's office, employ-

ees of the public defender's office, dentists, physicians, practicing attorneys, deputy sheriffs, officers appointed by the Governor, or elected officers or the chief deputy of each office or the deputy of each office if there is not more than one deputy in the office;

(2) Part-time employee means any person whose position is seasonal or temporary as defined by the commission;

(3) Department head means an officer holding an elected office, an officer holding office by appointment of the Governor, the chief deputy of any office or the deputy if there is not more than one deputy, and such other persons holding positions as are declared to be department heads by the county board; and

(4) Commission means the civil service commission formed pursuant to section 23-404.

Source: Laws 1971, LB 921, § 2; Laws 1977, LB 136, § 1; Laws 1989, LB 5, § 5; R.S.1943, (2012), § 23-2502; Laws 2019, LB411, § 3.
Operative date September 1, 2019.

23-404 Civil service commission; formation.

In any county having a population of four hundred thousand inhabitants or more as determined by the most recent federal decennial census, there shall be a civil service commission which shall be formed as provided in the County Civil Service Commission Act. A county shall comply with this section within six months after a determination that the population has reached four hundred thousand inhabitants or more as determined by the most recent federal decennial census.

Source: Laws 1971, LB 921, § 3; Laws 2016, LB742, § 9; Laws 2017, LB508, § 1; R.S.Supp.,2018, § 23-2503; Laws 2019, LB411, § 4.
Operative date September 1, 2019.

23-405 Commission; members; qualifications; number; election; vacancy; how filled.

(1) The commission shall consist of five members who shall be in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization.

(2) The members of the commission shall be as follows: (a) Two elected officers selected from the offices of and elected by the county commissioners, clerk, assessor, treasurer, public defender, register of deeds, clerk of the district court, engineer, and sheriff, being of opposite political parties if possible, and each party shall separately select its own member, (b) two full-time permanent county employees, and (c) one public member holding no public or political office. The initial two such employees shall be selected by the two elected officers referred to in subdivision (a) of this subdivision as follows: Any such employee who is at least twenty-one years of age may submit his or her name as a candidate to the elected officer of the political party with which the employee is registered who shall then select one commission member from such list of names. The four members of the commission shall then select the public member. The commission shall establish employee election procedures which shall provide that all county employees subject to the County Civil Service

Commission Act may vote and, if not less than twenty-one years of age, be candidates for a member of the commission. One employee member of the commission shall be a Democrat elected by the Democrat-registered employees subject to the County Civil Service Commission Act and one employee member of the commission shall be a Republican elected by the Republican-registered employees subject to the County Civil Service Commission Act. An employee otherwise eligible to vote and be a candidate for the office of employee member of the commission, but who is not registered as either a Democrat or a Republican, may become eligible to vote, and become a candidate for the office of employee member of the commission by making a declaration that he or she desires to vote for such a member of the commission, or be a candidate for such office, and, in the same declaration, designating the party, Democrat or Republican, with which he or she desires to be affiliated for this purpose. After making such declaration, that employee shall have the same right to vote for a candidate, and be a candidate for the office of employee member of the commission as if the employee were a registered member of the party so designated in the declaration. The manner, form, and contents of such declaration shall be initially established by the two elected officials referred to in subdivision (2)(a) of this section, subject to modification by the commission after it has been fully formed.

(3) The initial term of office of (a) the two elected officers shall be three years from May 21, 1971; (b) the initial term of office of the county employees shall be two years from May 21, 1971; and (c) the initial term of the public member shall be three years from May 21, 1971.

(4) At the expiration of the initial term of office, a successor member shall be elected or appointed as provided in the County Civil Service Commission Act for a term of three years. Membership on the commission of any member shall terminate upon the resignation of any member or at such time as the member no longer complies with the qualifications for election or appointment to the commission. If a member's term terminates prior to the expiration of the term for which the member was elected or appointed, the commission shall appoint a successor complying with the same qualifications for the unexpired term.

Source: Laws 1971, LB 921, § 4; Laws 2018, LB786, § 9; R.S.Supp.,2018, § 23-2504; Laws 2019, LB411, § 5.
Operative date September 1, 2019.

23-406 Commission; members; compensation; expenses.

The members of the commission shall not receive compensation for their services but shall be reimbursed for such necessary expenses and mileage as may be incurred in the performance of their duties with reimbursement for mileage to be made at the rate provided in section 81-1176. The county board shall provide sufficient funds in order that such commission may function as set forth in the County Civil Service Commission Act.

Source: Laws 1971, LB 921, § 5; Laws 1981, LB 204, § 31; Laws 1996, LB 1011, § 14; R.S.1943, (2012), § 23-2505; Laws 2019, LB411, § 6.
Operative date September 1, 2019.

23-407 Commission; meetings; notice; rules of procedure, adopt; chairperson.

The commission shall hold regular meetings at least once every three months and shall designate the time and place thereof by notice posted in the courthouse at least seven days prior to the meeting. The commission shall adopt rules of procedure and shall keep a record of its proceedings. The commission shall also make provision for special meetings, and all meetings and records of the commission shall be open to the public except as otherwise provided in the County Civil Service Commission Act. The commission shall elect one of its members as chairperson for a period of one year or until a successor has been duly elected and qualified.

Source: Laws 1971, LB 921, § 6; Laws 2018, LB786, § 10; R.S.Supp.,2018, § 23-2506; Laws 2019, LB411, § 7.
Operative date September 1, 2019.

23-408 Commission; powers; duties.

(1) The commission may prescribe the following: (a) General employment policies and procedures; (b) regulations for recruiting, examination, and certification of qualified applicants for employment and the maintenance of registers of qualified candidates for employment for all employees governed by the County Civil Service Commission Act; (c) a system of personnel records containing general data on all employees and standards for the development and maintenance of personnel records to be maintained within the offices governed by the act; (d) regulations governing such matters as hours of work, promotions, transfers, demotions, probation, terminations, and reductions in force; (e) regulations for use by all offices governed by the act relating to such matters as employee benefits, vacation, sick leave, and holidays.

(2) The commission shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations.

(3) The commission shall require department heads to supply to the commission position classification plans, job descriptions, and job specifications.

(4) Individual personnel records shall be available for inspection only by the employee involved, the employee's department head, and such other persons as the commission shall authorize.

(5) The commission shall have such other powers as are necessary to effectuate the purposes of the act.

(6) All acts of the commission pursuant to the authority conferred in this section shall be binding on all county department heads governed by the County Civil Service Commission Act.

Source: Laws 1971, LB 921, § 7; Laws 2018, LB786, § 11; R.S.Supp.,2018, § 23-2507; Laws 2019, LB411, § 8.
Operative date September 1, 2019.

23-409 Commission; salary and pay plans for employees; recommend.

The commission may recommend to the county board salary and pay plans for the employees.

Source: Laws 1971, LB 921, § 8; R.S.1943, (2012), § 23-2508; Laws 2019, LB411, § 9.
Operative date September 1, 2019.

23-410 Employees; status.

All employees governed by the County Civil Service Commission Act on September 1, 2019, shall retain their employment without the necessity of taking any qualifying examination.

Source: Laws 1971, LB 921, § 9; R.S.1943, (2012), § 23-2509; Laws 2019, LB411, § 10.

Operative date September 1, 2019.

23-411 Employee; discharged, suspended, demoted; order filed with commission; copy to employee; appeal.

Any employee may be discharged, suspended, or demoted in rank or compensation by his or her department head by a written order which shall specifically state the reasons therefor. Such order shall be filed with the commission, and a copy of such order shall be served upon the employee personally or by leaving it at his or her usual place of residence. Any employee so affected may, within ten days after service of the order, appeal such order to the commission. Notice of such appeal shall be in writing, signed by the employee appealing, and delivered to any member of the commission. The delivery of the notice of appeal shall be sufficient to perfect an appeal, and no other act shall be deemed necessary to confer jurisdiction of the commission over the appeal. In the event any employee is discharged, suspended, or demoted prior to the formation of the commission, such employee may appeal the order to the commission within ten days after the formation of the commission in the manner provided in this section.

Source: Laws 1971, LB 921, § 10; Laws 2018, LB786, § 12; R.S.Supp.,2018, § 23-2510; Laws 2019, LB411, § 11.

Operative date September 1, 2019.

23-412 Employee; discharged, suspended, demoted; appeal; hearing; order; effect.

The commission shall, within two weeks after receipt of the notice of appeal, hold a public hearing thereon at which the employee shall be entitled to appear personally, be represented by counsel, cross-examine witnesses, and produce evidence. The commission shall have the authority to affirm, modify, or revoke the order appealed from, and the finding and the decision of the commission shall be certified to the department head who issued the order, and the finding and decision of the commission shall be binding on all parties concerned. In the event of an appeal to the commission, no order affecting an employee shall become permanent until the finding and decision of the commission shall be certified as provided in this section. Notwithstanding any other provision of the County Civil Service Commission Act, an employee affected by an order may request transfer to another department governed by the County Civil Service Commission Act with the consent of the commission and the department head of such other department.

Source: Laws 1971, LB 921, § 11; R.S.1943, (2012), § 23-2511; Laws 2019, LB411, § 12.

Operative date September 1, 2019.

23-413 Commission; subpoena, oaths, production of records; powers.

To effectively carry out the duties imposed on the commission by the County Civil Service Commission Act, the commission shall have the power to subpoena witnesses, administer oaths, and compel the production of books and papers.

Source: Laws 1971, LB 921, § 12; R.S.1943, (2012), § 23-2512; Laws 2019, LB411, § 13.

Operative date September 1, 2019.

23-414 Employee; no discrimination against because of political, racial, or religious opinions or affiliations; exceptions.

No employee or person desiring to be an employee in an office governed by the County Civil Service Commission Act shall be appointed, demoted, discharged, or in any way favored or discriminated against, because of political, racial, or religious opinions or affiliations, but advocating or being a member of a political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence shall be sufficient reason to discharge an employee.

Source: Laws 1971, LB 921, § 13; R.S.1943, (2012), § 23-2513; Laws 2019, LB411, § 14.

Operative date September 1, 2019.

23-415 Chief deputy or deputy; removal; effect on salary.

Notwithstanding any other provision of the County Civil Service Commission Act, any person who holds the position of chief deputy, or deputy if there is not more than one deputy in the office, may be removed by the elected officer from the position of chief deputy or deputy without cause, but such person shall, if he or she has been an employee of the county for more than two years prior to the appointment as chief deputy or deputy, have the right, unless discharged or demoted as provided in sections 23-411 and 43-412, to remain as a county employee at a salary not less than eighty percent of his or her average salary during the three preceding years.

Source: Laws 1971, LB 921, § 14; Laws 2018, LB786, § 13; R.S.Supp.,2018, § 23-2514; Laws 2019, LB411, § 15.

Operative date September 1, 2019.

23-416 Human resources director; qualifications; duties; personnel records.

(1) The county board shall appoint a human resources director to help carry out the County Civil Service Commission Act. Such human resources director shall be a person experienced in the field of personnel administration and in known sympathy with the application of merit principles in public employment. The human resources director shall report to the county board. In addition to other duties imposed upon him or her by the county board, the human resources director shall:

- (a) Apply and carry out the act and the rules and regulations thereunder;
- (b) Attend meetings of the commission and act as its secretary and keep minutes of its proceedings;
- (c) Establish and maintain a roster of all employees in the classified service which shall set forth the class title, pay, status, and other pertinent data for each employee;

(d) Appoint such employees and experts and special assistants as may be necessary;

(e) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including, but not limited to, training, safety, health, counseling, and welfare;

(f) Encourage and exercise leadership in the development of effective personnel administration with the several county agencies, departments, and institutions; and

(g) Perform such other duties as he or she may consider necessary or desirable to carry out the purposes of the County Civil Service Commission Act.

(2) The human resources director shall require department heads to provide sufficient criteria to enable the commission to properly conduct employment examinations and shall require department heads to supply to the commission position classification plans, job descriptions, and job specifications.

(3) Individual personnel records shall be available for inspection only by the employee involved, the employee's department head, and such other persons as the commission shall authorize.

Source: Laws 2019, LB411, § 16.

Operative date September 1, 2019.

23-417 Commission; appeals; district court; procedure.

An appeal from a final order of the commission shall be in the manner provided in sections 25-1901 to 25-1908.

Source: Laws 1971, LB 921, § 15; Laws 1986, LB 595, § 1; R.S.1943, (2012), § 23-2515; Laws 2019, LB411, § 17.

Operative date September 1, 2019.

23-418 Act, how construed.

If any provision of the County Civil Service Commission Act or of any rule, regulation, or order thereunder or the application of such provision to any person or circumstances shall be held invalid, the remainder of the County Civil Service Commission Act and the application of such provision of the County Civil Service Commission Act or of such rule, regulation, or order to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Source: Laws 1971, LB 921, § 16; R.S.1943, (2012), § 23-2516; Laws 2019, LB411, § 18.

Operative date September 1, 2019.

ARTICLE 9

BUDGET

(a) APPLICABLE ONLY TO COUNTIES

Section

23-906. Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

(a) APPLICABLE ONLY TO COUNTIES

23-906 Budget-making authority, how constituted; budget, when prepared; contents; notice of hearing.

In each county the finance committee of the county board shall constitute the budget-making authority unless the board, in its discretion, designates or appoints one of its own members or the county comptroller, the county manager, or other qualified person as the budget-making authority. If he or she will accept the appointment, another county official may be appointed as the budget-making authority. For the performance of this additional responsibility, the county official accepting the appointment may receive such additional salary as fixed by the county board.

On or before August 1, the budget-making authority shall prepare a county budget document, in the form required by sections 23-904 and 23-905, for the fiscal year and transmit the document to the county board.

A summary of the budget, in the form required by section 23-905, showing for each fund (1) the requirements, (2) the outstanding warrants, (3) the operating reserve to be maintained, (4) the cash on hand at the close of the preceding fiscal year, (5) the revenue from sources other than taxation, (6) the amount to be raised by taxation, and (7) the amount raised by taxation in the preceding fiscal year, together with a notice of a public hearing to be had with respect to the budget before the county board, shall be published once at least four calendar days prior to the date of hearing in some legal newspaper published and of general circulation in the county or, if no such legal newspaper is published, in some legal newspaper of general circulation in the county. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing.

Source: Laws 1937, c. 56, § 5, p. 226; Laws 1939, c. 24, § 3, p. 126; C.S.Supp.,1941, § 26-2105; R.S.1943, § 23-906; Laws 1945, c. 45, § 6, p. 215; Laws 1990, LB 874, § 1; Laws 1991, LB 178, § 1; Laws 2002, LB 1018, § 1; Laws 2019, LB212, § 3.
Effective date September 1, 2019.

ARTICLE 11

SALARIES OF COUNTY OFFICERS

Section

23-1112. County officers; mileage; rate; county board; powers.

23-1112.01. County officers; employees; use of automobile; allowance.

23-1112 County officers; mileage; rate; county board; powers.

When it is necessary for any county officer or his or her deputy or assistants, except any county sheriff or his or her deputy, to travel on business of the county, he or she shall be allowed mileage at the rate per mile allowed by section 81-1176 for travel by personal automobile upon the presentation of his or her bill for the same accompanied by a proper voucher to the county board of his or her county in like manner as is provided for all other claims against the county, but if travel by rental vehicle or commercial or charter means is economical and practical, then he or she shall be allowed only the actual cost of the rental vehicle or commercial or charter means. The county board may establish different mileage rates based on whether the personal automobile usage is at the convenience of the county or at the convenience of the county officer or his or her deputy or assistant.

Source: Laws 1943, c. 90, § 12, p. 302; R.S.1943, § 23-1112; Laws 1947, c. 71, § 1, p. 228; Laws 1953, c. 58, § 1, p. 196; Laws 1957, c. 70,

§ 1, p. 294; Laws 1959, c. 84, § 1, p. 384; Laws 1967, c. 125, § 1, p. 400; Laws 1973, LB 338, § 1; Laws 1974, LB 625, § 1; Laws 1978, LB 691, § 1; Laws 1980, LB 615, § 1; Laws 1981, LB 204, § 25; Laws 1985, LB 393, § 16; Laws 1990, LB 893, § 1; Laws 1993, LB 697, § 1; Laws 1996, LB 1011, § 8; Laws 2019, LB609, § 2.

Effective date September 1, 2019.

23-1112.01 County officers; employees; use of automobile; allowance.

If a trip or trips included in an expense claim filed by any county officer or employee for mileage are made by personal automobile or otherwise, only one claim shall be allowed pursuant to section 23-1112, regardless of the fact that one or more persons are transported in the motor vehicle. No charge for mileage shall be allowed when such mileage accrues while using any motor vehicle owned by the State of Nebraska or by a county.

Source: Laws 1957, c. 70, § 12, p. 304; Laws 1961, c. 88, § 4, p. 309; Laws 1967, c. 125, § 2, p. 401; Laws 1973, LB 338, § 2; Laws 1974, LB 615, § 2; Laws 1978, LB 691, § 2; Laws 1980, LB 615, § 2; Laws 1981, LB 204, § 26; Laws 1996, LB 1011, § 9; Laws 2019, LB609, § 3.

Effective date September 1, 2019.

ARTICLE 15

REGISTER OF DEEDS

Section

23-1503.01. Instrument submitted for recording; requirements.

23-1503.01 Instrument submitted for recording; requirements.

(1) Any instrument submitted for recording in the office of the register of deeds shall contain a blank space at the top of the first page which is at least three inches by eight and one-half inches in size for recording information required by section 23-1510 by the register of deeds. If this space or the information required by such section is not provided, the register of deeds may add a page or use the back side of an existing page and charge for the page a fee established by section 33-109 for the recording of an instrument. No attachment or affirmation shall be used in any way to cover any information or printed material on the instrument.

(2) Printed forms primarily intended to be used for recordation purposes shall have a one-inch margin on the two vertical sides and a one-inch margin on the bottom of the page. Nonessential information such as page numbers or customer notations may be placed within the side and bottom margins.

(3) All instruments submitted for recording shall measure at least eight and one-half inches by eleven inches and not larger than eight and one-half inches by fourteen inches. The instrument shall be printed, typewritten, or computer-generated in black ink on a white background if submitted electronically or on white paper of not less than twenty-pound weight without watermarks or other visible inclusions. The instrument shall be sufficiently legible to allow for a readable copy to be reproduced using the method of reproduction used by the register of deeds. A font size of at least eight points shall be presumed to be sufficiently legible. Each signature on an instrument shall be in black or dark

blue ink and of sufficient color and clarity to ensure that the signature is readable when the instrument is reproduced. The signature may be a digital signature or an electronic signature. The name of each party to the instrument shall be typed, printed, or stamped beneath the original signature. An embossed or inked stamp shall not cover or otherwise materially interfere with any part of the instrument.

(4) This section does not apply to:

(a) Instruments signed before August 27, 2011;

(b) Instruments executed outside of the United States;

(c) Certified copies of instruments issued by governmental agencies, including vital records;

(d) Instruments signed by an original party who is incapacitated or deceased at the time the instruments are presented for recording;

(e) Instruments formatted to meet court requirements;

(f) Federal and state tax liens;

(g) Forms prescribed by the Uniform Commercial Code; and

(h) Plats, surveys, or drawings related to plats or surveys.

(5) The changes made to this section by Laws 2011, LB254, do not affect the duty of a register of deeds to file an instrument presented for recordation as set forth in sections 23-1506 and 76-237.

Source: Laws 1990, LB 1153, § 52; Laws 1995, LB 288, § 1; Laws 2011, LB254, § 1; Laws 2017, LB535, § 1; Laws 2019, LB186, § 19. Operative date July 1, 2020.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

- 23-2306. Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; 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.
- 23-2310.05. Defined contribution benefit; employer account; investment options; procedures; administration.
- 23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; certain required minimum distributions; election authorized.
- 23-2319.01. Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.
- 23-2320. Employee; reemployment; status; how treated; reinstatement; repay amount received.
- 23-2321. Retirement system; member; death before retirement; death benefit; death while performing qualified military service; additional death benefit.
- 23-2327. Beneficiary designation; order of priority.
- 23-2331. Act, how cited.

23-2306 Retirement system; members; employees; elected officials; certain contemplated business transactions regarding retirement system participation; procedures; costs; 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 who have attained the age of eighteen years shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of eighteen years may exercise the option to begin participation in the retirement system within the first thirty days of employment, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system within thirty days after taking office. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4)(a) The board may determine that a governmental entity currently participating in the retirement system no longer qualifies, in whole or in part, under section 414(d) of the Internal Revenue Code as a participating employer in a governmental plan.

(b)(i) To aid governmental entities in their business decisionmaking process, any governmental entity currently participating in the retirement system contemplating a business transaction that may result in such entity no longer qualifying, in whole or in part, under section 414(d) of the Internal Revenue Code may notify the board in writing as soon as reasonably practicable, but no later than one hundred eighty days before the transaction is to occur.

(ii) The board when timely notified shall, as soon as is reasonably practicable, obtain from its contracted actuary the cost of any actuarial study necessary to determine the potential funding obligation. The board shall notify the entity of such cost.

(iii) If such entity pays the board's contracted actuary pursuant to subdivision (4)(c)(vi) of this section for any actuarial study necessary to determine the potential funding obligation, the board shall, as soon as reasonably practicable following its receipt of the actuarial study, (A) determine whether the entity's contemplated business transaction will cause the entity to no longer qualify under section 414(d) of the Internal Revenue Code, (B) determine whether the contemplated business transaction constitutes a plan termination by the entity, (C) determine the potential funding obligation, (D) determine the administrative costs that will be incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system, and (E) notify the entity of such determinations.

(iv) Failure to timely notify the board pursuant to subdivision (4)(b)(i) of this section may result in the entity being treated as though the board made a decision pursuant to subdivision (4)(a) of this section.

(c) If the board makes a determination pursuant to subdivision (4)(a) of this section, or if the entity engages in the contemplated business transaction reviewed under subdivision (4)(b) of this section that results in the entity no longer qualifying under section 414(d) of the Internal Revenue Code:

(i) The board shall notify the entity that it no longer qualifies under section 414(d) of the Internal Revenue Code within ten business days after the determination;

(ii) The affected plan members shall be immediately considered fully vested;

(iii) The affected plan members shall become inactive within ninety days after the board's determination;

(iv) The entity shall pay to the County Employees Retirement Fund an amount equal to any funding obligation;

(v) The entity shall pay to the County Employees Cash Balance Retirement Expense Fund an amount equal to any administrative costs incurred by the board or the Nebraska Public Employees Retirement Systems in connection with the entity's removal from the retirement system; and

(vi) The entity shall pay directly to the board's contracted actuary an amount equal to the cost of any actuarial study necessary to aid the board in determining the amount of such funding obligation, if not previously paid.

(d) For purposes of this subsection:

(i) Business transaction means a merger; consolidation; sale of assets, equipment, or facilities; termination of a division, department, section, or subgroup of the entity; or any other business transaction that results in termination of some or all of the entity's workforce; and

(ii) Funding obligation means the financial liability of the retirement system to provide benefits for the affected plan members incurred by the retirement system due to the entity's business transaction calculated using the methodology and assumptions recommended by the board's contracted actuary and approved by the board. The methodology and assumptions used must be structured in a way that ensures the entity is financially liable for all the costs of the entity's business transaction, and the retirement system is not financially liable for any of the cost of the entity's business transaction.

(e) The board may adopt and promulgate rules and regulations to carry out this subsection including, but not limited to, the methods of notifying the board of pending business transactions, the acceptable methods of payment, and the timing of such payment.

(5) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(6) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify

such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(7) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(8) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(9) A full-time or part-time employee of the state who becomes a county employee pursuant to transfer of assessment function to a county shall not be deemed to have experienced a termination of employment and shall receive vesting credit for his or her years of participation in the State Employees Retirement System of the State of Nebraska.

(10) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997, LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1; Laws 2011, LB509, § 4; Laws 2013, LB263, § 3; Laws 2015, LB261, § 3; Laws 2018, LB1005, § 4; Laws 2019, LB34, § 1.
Effective date April 18, 2019.

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. An active member shall make a one-time election beginning September 1, 2012, through October 31, 2012, in order to participate in the cash balance benefit. If no such election is made, 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 beginning September 1, 2012, through October 31, 2012, shall commence participation in the cash balance benefit on January 2, 2013.

Any member who made the election prior to April 7, 2012, does not have to make another election of the cash balance benefit beginning September 1, 2012, through October 31, 2012.

(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 April 7, 2012, or beginning September 1, 2012, through October 31, 2012, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account within the County Employees Retirement Fund 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 (20) 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 (20) 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; Laws 2011, LB509, § 6; Laws 2012, LB916, § 6; Laws 2017, LB415, § 12; Laws 2019, LB34, § 2.
Effective date April 18, 2019.

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.

(a) Prior to January 1, 2021, the investment options shall include, but not be limited to, the following:

(i) 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;

(ii) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(iii) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(iv) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(v) 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 division of The McGraw-Hill Companies, Inc., 500 Index;

(vi) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(vii) 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

(viii) 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 prior to January 1, 2021, all of his or her funds shall be placed in the option described in subdivision (a)(ii) 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.

(b) On or after January 1, 2021, the investment options shall include, but not be limited to, the following:

(i) 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;

(ii) A stable return account which shall be invested by or under the direction of the state investment officer in a stable value strategy that provides capital preservation and consistent, steady returns;

(iii) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(iv) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments; and

(v) A life-cycle fund which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that adjusts from a position of higher risk to one of lower risk as the member ages.

If the member fails to select an option or combination of options pursuant to this subdivision (b), all of his or her funds shall be placed in the option described in subdivision (b)(v) 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)(a) 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 may 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; Laws 2012, LB916, § 7; Laws 2014, LB759, § 16; Laws 2018, LB1005, § 7; Laws 2019, LB32, § 1.

Effective date September 1, 2019.

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 investment option described in subdivision (1)(a)(v) or (1)(b)(v) of section 23-2309.01, whichever option is applicable based on the date of contribution. 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)(a) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board may 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 investment 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; Laws 2012, LB916, § 8; Laws 2018, LB1005, § 8; Laws 2019, LB32, § 2.

Effective date September 1, 2019.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; certain required minimum distributions; election authorized.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in

the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

(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 the member's death before sixty monthly payments have been made, the monthly payments will continue until sixty monthly payments have been made in total pursuant to section 23-2327.

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 that is recommended by the actuary and approved by the board following an actuarial experience study, a benefit adequacy study, or a plan valuation. The interest rate and actuarial factors in effect on the member's retirement date will be used to calculate actuarial equivalency of any retirement benefit. Such interest rate may be, but is not required to be, equal to the assumed rate of return.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefit Guaranty Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used to calculate the retirement benefits for cash balance plan members.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be

paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

(6) A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code, and who would have satisfied that requirement by receiving distributions that are either equal to the 2009 required minimum distributions or one or more payments in a series of substantially equal distributions, including the 2009 required minimum distribution, made at least annually and expected to last for the life or life expectancy of the participant, the joint lives or joint life expectancy of the participant and the participant's designated beneficiary, or for a period of at least ten years, shall receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries shall be given the opportunity to elect to stop receiving the distributions described in this subsection.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4; Laws 2012, LB916, § 9; Laws 2013, LB263, § 7; Laws 2017, LB415, § 14; Laws 2019, LB34, § 3.
Effective date April 18, 2019.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; use; investment.

(1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to restore employer accounts or employer cash balance accounts. Except as provided in subsection (3) of section 23-2310.04 and subdivision (4)(c) of section 23-2317, no forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is

filed, transactions involving forfeiture of his or her employer account or employer cash balance account and transactions for payment of benefits under sections 23-2315 and 23-2319 shall be suspended pending the final outcome of the grievance or other appeal.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. Prior to July 1, 2012, the County Employer Retirement Expense Fund shall be used to meet expenses of the retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary. The County Employer Retirement Expense Fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. On July 1, 2012, or as soon as practicable thereafter, any money in the County Employer Retirement Expense Fund shall be transferred by the State Treasurer to the County Employees Retirement Fund and credited to the cash balance benefit established in section 23-2308.01.

(4) Prior to July 1, 2012, expenses incurred as a result of a county depositing amounts into the County Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with subsection (3) of this section. Any money in the County Employer Retirement Expense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4; Laws 2011, LB509, § 7; Laws 2012, LB916, § 10; Laws 2013, LB263, § 9; Laws 2019, LB34, § 4. Effective date April 18, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

23-2320 Employee; reemployment; status; how treated; reinstatement; repay amount received.

(1) Prior to January 1, 2020, 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.

(5) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to service in any capacity with any county under the County Employees Retirement Act prior to having a one-hundred-twenty-day break in service, the member:

(a) Shall not be deemed to have had a bona fide separation of service;

(b) Shall be immediately reenrolled in:

(i) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(ii) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

(c) Shall immediately resume making contributions;

(d) Shall make up any missed contributions based upon services rendered and compensation received;

- (e) Shall have all distributions from the retirement system canceled; and
- (f) Shall repay the gross distributions from the retirement system.

(6)(a) Beginning January 1, 2020, if a contributing member of the retirement system ceases to be an employee and returns to permanent full-time or permanent part-time service in any capacity with any county under the County Employees Retirement Act after having a one-hundred-twenty-day break in service, the member:

- (i) Shall be immediately reenrolled in:

(A) The defined contribution benefit if the member was contributing to the defined contribution benefit prior to ceasing employment; or

(B) The cash balance benefit in which the member was participating prior to ceasing employment if the member was contributing to the cash balance benefit prior to ceasing employment;

- (ii) Shall immediately resume making contributions;

(iii) Shall continue receiving any annuity elected after the member ceased employment and before the member was reemployed; and

(iv) Shall be prohibited from taking any distributions from the retirement system until the employee again terminates employment with any and all counties under the County Employees Retirement Act.

(b) For the purposes of vesting employer contributions made prior to and after reentry into the retirement system, the member's years of participation prior to the date the member originally ceased employment and the years of participation after the member is reenrolled in the retirement system shall be included as years of participation, except that if the member is not vested on the date the member originally ceased employment and has taken a distribution, the years of participation prior to the date the member originally ceased employment shall be limited in a ratio equal to the value of the distribution that the member repays divided by the total value of the distribution taken as described in subdivision (6)(c) of this section.

(c) A reemployed member may repay all or a portion of the value of a distribution except for an annuity elected after the member ceased employment and before the member was reemployed. Repayment of such a distribution shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to the member again ceasing 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. If the member fails to repay all of the value of such a distribution prior to the member again ceasing employment, the member shall be forever barred from repaying the value of such a distribution taken between the periods of employment. 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 distribution repaid by the member divided by the amount of the distribution taken. The employer account or

employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

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; Laws 2011, LB509, § 8; Laws 2019, LB34, § 5.
Effective date April 18, 2019.

23-2321 Retirement system; member; death before retirement; death benefit; death while performing qualified military service; additional death benefit.

(1)(a) In the event of a member's death before the member's retirement date, the death benefit shall be equal to (i) for participants in the defined contribution benefit, the total of the employee account and the employer account and (ii) for participants in the cash balance benefit, the benefit provided in section 23-2308.01.

(b) Except as provided in section 42-1107, the death benefit shall be paid pursuant to section 23-2327.

(c) 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.

(2) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(3) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with a participating county and such employment had terminated on the date 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; Laws 2012, LB916, § 11; Laws 2019, LB34, § 6.
Effective date April 18, 2019.

23-2327 Beneficiary designation; order of priority.

(1) Except as provided in section 42-1107, in the event of a member’s death, the death benefit shall be paid to the following, in order of priority:

- (a) To the member’s surviving designated beneficiary on file with the board;
- (b) To the spouse married to the member on the member’s date of death if there is no surviving designated beneficiary on file with the board; or
- (c) To the member’s estate if the member is not married on the member’s date of death and there is no surviving designated beneficiary on file with the board.

(2) The priority designations described in subsection (1) of this section shall not apply if the member has retired under a joint and survivor benefit option.

Source: Laws 2019, LB34, § 8.
Effective date April 18, 2019.

23-2331 Act, how cited.

Sections 23-2301 to 23-2332.01 shall be known and may be cited as the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 31, p. 411; Laws 1985, LB 347, § 18; Laws 1991, LB 549, § 13; Laws 1994, LB 833, § 8; Laws 1995, LB 501, § 3; Laws 1996, LB 847, § 10; Laws 1996, LB 1076, § 7; Laws 1997, LB 250, § 8; Laws 1997, LB 623, § 6; Laws 1997, LB 624, § 8; Laws 1998, LB 1191, § 33; Laws 1999, LB 687, § 3; Laws 2001, LB 142, § 37; Laws 2001, LB 186, § 2; Laws 2002, LB 407, § 10; Laws 2002, LB 687, § 17; Laws 2019, LB34, § 7.
Effective date April 18, 2019.

ARTICLE 25

CIVIL SERVICE SYSTEM

(a) COUNTIES OF MORE THAN 400,000 INHABITANTS

- Section
- 23-2501. Transferred to section 23-402.
 - 23-2502. Transferred to section 23-403.
 - 23-2503. Transferred to section 23-404.
 - 23-2504. Transferred to section 23-405.
 - 23-2505. Transferred to section 23-406.
 - 23-2506. Transferred to section 23-407.
 - 23-2507. Transferred to section 23-408.
 - 23-2508. Transferred to section 23-409.
 - 23-2509. Transferred to section 23-410.
 - 23-2510. Transferred to section 23-411.
 - 23-2511. Transferred to section 23-412.
 - 23-2512. Transferred to section 23-413.
 - 23-2513. Transferred to section 23-414.
 - 23-2514. Transferred to section 23-415.
 - 23-2515. Transferred to section 23-417.
 - 23-2516. Transferred to section 23-418.

(a) COUNTIES OF MORE THAN 400,000 INHABITANTS

23-2501 Transferred to section 23-402.

23-2502 Transferred to section 23-403.

23-2503 Transferred to section 23-404.

23-2504 Transferred to section 23-405.

23-2505 Transferred to section 23-406.

23-2506 Transferred to section 23-407.

23-2507 Transferred to section 23-408.

23-2508 Transferred to section 23-409.

23-2509 Transferred to section 23-410.

23-2510 Transferred to section 23-411.

23-2511 Transferred to section 23-412.

23-2512 Transferred to section 23-413.

23-2513 Transferred to section 23-414.

23-2514 Transferred to section 23-415.

23-2515 Transferred to section 23-417.

23-2516 Transferred to section 23-418.

ARTICLE 32 COUNTY ASSESSOR

Section

23-3211. Law enforcement officer or Nebraska National Guard member; residential address; withheld from public; application; form; county assessor and register of deeds; duty.

23-3211 Law enforcement officer or Nebraska National Guard member; residential address; withheld from public; application; form; county assessor and register of deeds; duty.

Unless requested in writing, the county assessor and register of deeds shall withhold from the public the residential address of a law enforcement officer or member of the Nebraska National Guard acting pursuant to subdivision (3) of section 55-182 who applies to the county assessor in the county of his or her residence. The application shall be in a form prescribed by the county assessor and shall include the applicant's name and address and the parcel identification number for his or her residential address. A law enforcement officer shall include in the application his or her law enforcement identification number. A member of the Nebraska National Guard shall include in the application proof of his or her status as a member, in a manner prescribed by the county assessor. The county assessor shall notify the register of deeds regarding the receipt of a complete application. The county assessor and the register of deeds shall withhold the address of a law enforcement officer or member of the Nebraska National Guard who complies with this section for five years after receipt of a complete application. The officer or member may renew his or her application every five years upon submission of an updated application.

Source: Laws 2017, LB624, § 1; Laws 2019, LB152, § 2.

Effective date September 1, 2019.

CHAPTER 24

COURTS

Article.

2. Supreme Court.
 - (a) Organization. 24-201.01.
3. District Court.
 - (a) Organization. 24-301.02.
 - (e) Uncalled-for Funds; Disposition. 24-345.
8. Selection and Retention of Judges.
 - (a) Judicial Nominating Commissions. 24-803.

ARTICLE 2

SUPREME COURT

(a) ORGANIZATION

Section

24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On January 1, 2019, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred seventy-six thousand two hundred ninety-nine dollars and thirty-eight cents. On July 1, 2019, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred eighty-one thousand five hundred eighty-eight dollars and thirty-six cents. On July 1, 2020, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred eighty-seven thousand thirty-six dollars and one cent.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 127, § 1, p. 480; Laws 1963, c. 534, § 1, p. 1676; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1; Laws 2012, LB862,

§ 1; Laws 2013, LB306, § 1; Laws 2015, LB663, § 1; Laws 2017, LB647, § 1; Laws 2019, LB300, § 1.
Operative date July 1, 2019.

ARTICLE 3
DISTRICT COURT

(a) ORGANIZATION

Section

24-301.02. District court judicial districts; described; number of judges.

(e) UNCALLED-FOR FUNDS; DISPOSITION

24-345. Funds uncalled for; payment to State Treasurer; clerk's liability discharged.

(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 Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, Richardson, and Otoe;

District No. 2 shall contain the counties of Sarpy and Cass;

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, Webster, Clay, and Nuckolls;

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.

Until July 1, 2021, in the fourth district there shall be sixteen judges of the district court. Beginning July 1, 2021, in the fourth judicial district there shall be seventeen judges of the district court.

In the third district 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. 23, § 1, p. 186; Laws 1965, c. 24, § 1, p. 189; 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; Laws 2018, LB697, § 1; Laws 2019, LB309, § 1.
Effective date September 1, 2019.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

(e) UNCALLED-FOR FUNDS; DISPOSITION

24-345 Funds uncalled for; payment to State Treasurer; clerk's liability discharged.

All money, other than witness fees, fines, penalties, forfeitures and license money, that comes into the possession of the clerk of the district court for any county in the State of Nebraska by virtue of his or her office and remains in the custody of the clerk of the district court, uncalled for by the party or parties entitled to the money for a period of three years following the close of litigation in relation to the money, shall be remitted by the clerk of the district court to the State Treasurer on the first Tuesday in January, April, July, or October, respectively, following the expiration of the three-year period, for deposit in the Unclaimed Property Escheat Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the clerk of the district court making such payment from all liability for the money so paid in compliance with this section.

Source: Laws 1933, c. 33, § 1, p. 214; C.S.Supp.,1941, § 27-342; R.S. 1943, § 24-345; Laws 1980, LB 572, § 1; Laws 1992, Third Spec. Sess., LB 26, § 1; Laws 2019, LB406, § 1.
Effective date March 13, 2019.

Cross References

Filing of claim to property delivered to state, see section 69-1318.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(a) JUDICIAL NOMINATING COMMISSIONS

Section

24-803. Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(a) JUDICIAL NOMINATING COMMISSIONS

24-803 Judicial nominating commission; members; term; appointments by Governor; elections by lawyers.

(1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) Members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Source: Laws 1963, c. 124, § 3, p. 472; Laws 1973, LB 110, § 2; Laws 1991, LB 251, § 2; Laws 1992, LB 1059, § 6; Laws 1995, LB 189, § 3; Laws 1995, LB 303, § 2; Laws 2019, LB339, § 1.
Effective date September 1, 2019.

CHAPTER 25

COURTS; CIVIL PROCEDURE

Article.

2. Commencement and Limitation of Actions. 25-213, 25-217.
5. Commencement of Actions; Process.
 - (b) Service and Return of Summons. 25-516.01.
19. Reversal or Modification of Judgments and Orders by Appellate Courts.
 - (a) Review on Petition in Error. 25-1902.
21. Actions and Proceedings in Particular Cases.
 - (s) Shoplifting. 25-21,194. Repealed.
 - (qq) Human Trafficking Victims Civil Remedy Act. 25-21,299.
27. Provisions Applicable to County Courts.
 - (c) Unclaimed Funds. 25-2717.
28. Small Claims Court. 25-2803.
29. Dispute Resolution.
 - (a) Dispute Resolution Act. 25-2901 to 25-2921.
35. Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images. 25-3501 to 25-3509.

ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section

- 25-213. Tolling of statutes of limitation; when.
 25-217. Action; commencement; defendant not properly served; effect.

25-213 Tolling of statutes of limitation; when.

Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, the State Miscellaneous Claims Act, or the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Source: R.S.1867, Code § 17, p. 396; R.S.1913, § 7576; C.S.1922, § 8519; Laws 1925, c. 64, § 2, p. 221; C.S.1929, § 20-213; R.S.1943, § 25-213; Laws 1947, c. 243, § 12, p. 766; Laws 1972, LB 1049, § 1; Laws 1974, LB 949, § 2; Laws 1984, LB 692, § 2; Laws

1986, LB 1177, § 5; Laws 1988, LB 864, § 5; Laws 2007, LB339, § 1; Laws 2019, LB680, § 10.

Effective date September 1, 2019.

Cross References

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Political Subdivisions Tort Claims Act, see section 13-901.

State Contract Claims Act, see section 81-8,302.

State Miscellaneous Claims Act, see section 81-8,294.

State Tort Claims Act, see section 81-8,235.

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

25-217 Action; commencement; defendant not properly served; effect.

(1) An action is commenced on the day the complaint is filed with the court.

(2) Each defendant in the action must be properly served within one hundred eighty days of the commencement of the action. If the action is stayed or enjoined during the one-hundred-eighty-day period, then any defendant who was not properly served before the action was stayed or enjoined must be properly served within ninety days after the stay or injunction is terminated or modified so as to allow the action to proceed.

(3) If any defendant is not properly served within the time specified by subsection (2) of this section then the action against that defendant is dismissed by operation of law. The dismissal is without prejudice and becomes effective on the day after the time for service expires.

Source: R.S.1867, Code § 19, p. 396; R.S.1913, § 7580; C.S.1922, § 8523; C.S.1929, § 20-217; R.S.1943, § 25-217; Laws 1979, LB 510, § 1; Laws 1986, LB 529, § 21; Laws 2002, LB 876, § 5; Laws 2019, LB308, § 1.

Effective date September 1, 2019.

Cross References

For commencement of action, see section 25-501.

ARTICLE 5

COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section

25-516.01. Service; voluntary appearance; defenses.

(b) SERVICE AND RETURN OF SUMMONS

25-516.01 Service; voluntary appearance; defenses.

(1) The voluntary appearance of the party is equivalent to service.

(2) A defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process may be asserted only under the procedure provided in the pleading rules adopted by the Supreme Court. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling will be waived and not preserved for appellate review if the party asserting the defense either (a) thereafter files a demand for affirmative relief by way of counterclaim, cross-claim, or third-party claim or (b) fails to dismiss a demand for

such affirmative relief that was previously filed. If any of those defenses are asserted either by motion or in a responsive pleading and the court overrules the defense, an objection that the court erred in its ruling on any issue, except an objection to the court’s ruling on personal jurisdiction, will be waived and not preserved for appellate review if the party asserting the defense thereafter participates in proceedings on any issue other than those defenses.

(3) The filing of a suggestion of bankruptcy is not an appearance and does not waive the defense of lack of personal jurisdiction, insufficiency of process, or insufficiency of service of process.

Source: Laws 1983, LB 447, § 32; Laws 2002, LB 876, § 15; Laws 2019, LB308, § 2.
Effective date September 1, 2019.

ARTICLE 19

REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

(a) REVIEW ON PETITION IN ERROR

Section
25-1902. Final order, defined; appeal.

(a) REVIEW ON PETITION IN ERROR

25-1902 Final order, defined; appeal.

(1) The following are final orders which may be vacated, modified, or reversed:

- (a) An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment;
- (b) An order affecting a substantial right made during a special proceeding;
- (c) An order affecting a substantial right made on summary application in an action after a judgment is entered; and
- (d) An order denying a motion for summary judgment when such motion is based on the assertion of sovereign immunity or the immunity of a government official.

(2) An order under subdivision (1)(d) of this section may be appealed pursuant to section 25-1912 within thirty days after the entry of such order or within thirty days after the entry of judgment.

Source: R.S.1867, Code § 581, p. 496; R.S.1913, § 8176; C.S.1922, § 9128; C.S.1929, § 20-1902; R.S.1943, § 25-1902; Laws 2019, LB179, § 1.
Effective date September 1, 2019.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(s) SHOPLIFTING

Section
25-21,194. Repealed. Laws 2019, LB71, § 3.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299. Civil action authorized; recovery; attorney’s fees and costs; order of attachment.

(s) SHOPLIFTING

25-21,194 Repealed. Laws 2019, LB71, § 3.

(qq) HUMAN TRAFFICKING VICTIMS CIVIL REMEDY ACT

25-21,299 Civil action authorized; recovery; attorney's fees and costs; order of attachment.

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim's death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her damages proximately caused by the actions of the defendant plus any and all attorney's fees and costs reasonably associated with the civil action.

(3) Damages recoverable pursuant to subsection (2) of this section include all damages otherwise recoverable under the law and include, but are not limited to:

(a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;

(b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;

(c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;

(d) The reasonable value of the plaintiff's labor and services the plaintiff has lost because he or she was a trafficking victim;

(e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;

(f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant's associates;

(g) In the event of death, damages available as in other actions for wrongful death; and

(h) The reasonable costs incurred by the plaintiff to participate in the criminal investigation or prosecution or attend criminal proceedings related to trafficking the plaintiff.

(4) In addition to all remedies available under this section, the court may enter an order of attachment pursuant to sections 25-1001 to 25-1010.

Source: Laws 2015, LB294, § 3; Laws 2019, LB519, § 1.

Effective date September 1, 2019.

ARTICLE 27
PROVISIONS APPLICABLE TO COUNTY COURTS

(c) UNCLAIMED FUNDS

Section

25-2717. Unclaimed funds; payment to State Treasurer; disposition.

(c) UNCLAIMED FUNDS

25-2717 Unclaimed funds; payment to State Treasurer; disposition.

If any fees, money, condemnation awards, legacies, devises, sums due creditors, or costs due or belonging to any heir, legatee, or other person or persons have not been paid to or demanded by the person or persons entitled to the funds within three years from the date the funds were paid to the county judge or his or her predecessors in office, it shall be the duty of the county judge to notify the State Treasurer of the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs remaining. When directed by the State Treasurer, the county judge shall remit the fees, money, condemnation awards, legacies, devises, sums due creditors, or costs to the State Treasurer for deposit in the Unclaimed Property Escheat Trust Fund pursuant to section 69-1317. Such payment shall release the bond of the county judge making such payment of all liability for such fees, money, condemnation awards, legacies, devises, sums due creditors, and costs due to heirs, legatees, or other persons paid in compliance with this section.

Source: Laws 1909, c. 40, § 2, p. 227; R.S.1913, § 1243; Laws 1921, c. 105, § 1, p. 376; C.S.1922, § 1166; C.S.1929, § 27-546; R.S.1943, § 24-553; Laws 1949, c. 49, § 1, p. 157; Laws 1967, c. 139, § 4, p. 427; R.R.S.1943, § 24-553; Laws 1972, LB 1032, § 63; Laws 1978, LB 860, § 1; R.S.1943, (1985), § 24-563; Laws 1992, Third Spec. Sess., LB 26, § 2; Laws 2019, LB406, § 2.
Effective date March 13, 2019.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

ARTICLE 28
SMALL CLAIMS COURT

Section

25-2803. Parties; representation.

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.

(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; Laws 2019, LB71, § 1.
Effective date September 1, 2019.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section	
25-2901.	Act, how cited.
25-2902.	Legislative findings.
25-2903.	Terms, defined.
25-2904.	Office of Dispute Resolution; established; director; qualifications; duties.
25-2905.	Advisory Council on Dispute Resolution; created; members.
25-2906.	Council; members; terms; vacancy; officers.
25-2908.	Director; duties.
25-2909.	Grants; application; contents; approved centers; reports.
25-2911.	Restorative justice programs and dispute resolution; types of cases; referral of cases.
25-2912.	Restorative justice or dispute resolution process; procedures.
25-2912.01.	Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.
25-2912.02.	Best practices; policies and procedures.
25-2913.	Mediators and restorative justice facilitators; qualifications; compensation; powers and duties.
25-2914.	Confidentiality; exceptions.
25-2914.01.	Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.
25-2915.	Immunity; exceptions.
25-2916.	Agreement; contents.
25-2917.	Tolling of civil statute of limitations; when.
25-2918.	Rules and regulations.
25-2919.	Application of act.
25-2920.	Director; report.
25-2921.	Dispute Resolution Cash Fund; created; use; investment.

(a) DISPUTE RESOLUTION ACT

25-2901 Act, how cited.

Sections 25-2901 to 25-2921 shall be known and may be cited as the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 1; Laws 1996, LB 922, § 1; Laws 2019, LB595, § 1.

Effective date September 1, 2019.

25-2902 Legislative findings.

The Legislature finds that:

(1) The resolution of certain disputes and offenses can be costly and time consuming in the context of a formal judicial proceeding;

(2) Employing restorative justice and mediation to address disputes can provide an avenue for efficiently reducing the volume of matters which burden the court system in this state;

(3) Restorative justice practices and programs can meet the needs of Nebraska's residents by providing forums in which persons may participate in voluntary or court-ordered resolution of juvenile and adult offenses in an informal and less adversarial atmosphere;

(4) Employing restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals;

(5) Restorative justice practices and programs are grounded in a wide body of research and evidence showing individuals who participate in restorative justice practices and programs are less likely to reoffend;

(6) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;

(7) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the persons involved can discuss the dispute or offense through a private and informal yet structured process;

(8) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;

(9) There is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses;

(10) Mediation can increase the public's access to dispute resolution and thereby increase public regard and usage of the legal system; and

(11) Office-approved nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.

Source: Laws 1991, LB 90, § 2; Laws 2019, LB595, § 2.

Effective date September 1, 2019.

25-2903 Terms, defined.

For purposes of the Dispute Resolution Act:

(1) Approved center means a center that has applied for and received approval from the director under section 25-2909;

(2) Center means a nonprofit organization or a court-established program which makes dispute resolution procedures and restorative justice services available;

(3) Council means the Advisory Council on Dispute Resolution;

(4) Director means the Director of the Office of Dispute Resolution;

(5) Dispute resolution process means a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;

(6) Mediation means the intervention into a dispute by a third party who has no decisionmaking authority and is impartial to the issues being discussed;

(7) Mediator means a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict;

(8) Office means the Office of Dispute Resolution;

(9) Restorative justice facilitator means a person trained to facilitate restorative justice practices as a staff member or affiliate of an approved center; and

(10) Restorative justice means practices, programs, or services described in section 25-2912.01 that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense.

Source: Laws 1991, LB 90, § 3; Laws 2019, LB595, § 3.

Effective date September 1, 2019.

25-2904 Office of Dispute Resolution; established; director; qualifications; duties.

The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation, restorative justice, and dispute resolution. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

Source: Laws 1991, LB 90, § 4; Laws 2019, LB595, § 4.

Effective date September 1, 2019.

25-2905 Advisory Council on Dispute Resolution; created; members.

The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation, restorative justice, and dispute resolution and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of fifteen voting members. The membership shall include a district court judge, county court judge, and juvenile court judge and a representative from the Office of Probation Administration, the Nebraska State Bar Association, and the Nebraska County Attorneys Association. Nominations for the remaining members may be solicited from such entities and from the Nebraska Mediation Association, the Public Counsel, social workers, mental health professionals, diversion program administrators, educators, law enforcement entities, crime victim advocates, and former participants in restorative justice programs and related fields. The

council shall be appointed by the Supreme Court or its designee. The Supreme Court or its designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

Source: Laws 1991, LB 90, § 5; Laws 1999, LB 315, § 2; Laws 2019, LB595, § 5.

Effective date September 1, 2019.

25-2906 Council; members; terms; vacancy; officers.

The initial members of the council and the new members required by the changes to section 25-2905 made by Laws 2019, LB595, shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled and shall last for the duration of the term vacated. Appointments to the council required by changes to section 25-2905 made by Laws 2019, LB595, shall be made within ninety days after September 1, 2019. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

Source: Laws 1991, LB 90, § 6; Laws 2019, LB595, § 6.

Effective date September 1, 2019.

25-2908 Director; duties.

Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

- (1) Approve centers which meet requirements for approval;
- (2) Develop and supervise a uniform system of reporting and collecting statistical data from approved centers;
- (3) Develop and supervise a uniform system of evaluating approved centers;
- (4) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;
- (5) Develop and administer guidelines for a sliding scale of fees to be charged by approved centers;
- (6) Develop, initiate, or approve curricula and training sessions for mediators and staff of approved centers and of courts;
- (7) Establish volunteer training programs;
- (8) Promote public awareness of the restorative justice and dispute resolution process;
- (9) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act;
- (10) Develop and supervise a uniform system to create and maintain a roster of approved centers and victim youth conferencing and other restorative justice facilitators who are affiliated with approved centers. The roster shall be made available to courts and county attorneys;
- (11) Enhance the sustainability of approved centers;
- (12) Support approved centers in the implementation of restorative justice programs;
- (13) Coordinate the development and implementation of new restorative justice programs;

(14) Develop and administer a uniform system for reporting and collecting statistical data regarding restorative justice programs from approved centers;

(15) Develop and administer a uniform system for evaluating restorative justice programs administered by approved centers;

(16) Develop and administer a uniform system for evaluating quality assurance and fidelity to established restorative justice principles;

(17) Coordinate software and data management system quality assurance for the office and the approved centers;

(18) Coordinate restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts;

(19) Review and provide analyses of state and federal laws and policies and judicial branch policies relating to restorative justice programs for juvenile populations and adult populations;

(20) Promote public awareness of the restorative justice and dispute resolution process under the Dispute Resolution Act; and

(21) Seek and identify funds from public and private sources for carrying out new and ongoing restorative justice programs.

Source: Laws 1991, LB 90, § 8; Laws 1998, LB 1073, § 7; Laws 2019, LB595, § 7.

Effective date September 1, 2019.

25-2909 Grants; application; contents; approved centers; reports.

(1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.

(2) A center or an entity proposing a center may apply to the office for approval to provide services under the Dispute Resolution Act by submitting an application which includes:

(a) A strategic plan for the operation of the center;

(b) The center's objectives;

(c) The areas of population to be served;

(d) The administrative organization;

(e) Record-keeping procedures;

(f) Procedures for intake, for scheduling, and for conducting and terminating restorative justice programs and dispute resolution sessions;

(g) Qualifications for mediators and restorative justice facilitators for the center;

(h) An annual budget for the center;

(i) The results of an audit of the center for a period covering the previous year if the center was in operation for such period; and

(j) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

(3) The office may specify additional criteria for approval and for grants as it deems necessary.

(4) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act.

Source: Laws 1991, LB 90, § 9; Laws 2019, LB595, § 8.
Effective date September 1, 2019.

25-2911 Restorative justice programs and dispute resolution; types of cases; referral of cases.

(1) The following types of cases may be accepted for restorative justice programs and dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations;

(c) Juvenile offenses and disputes involving juveniles when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918;

(d) Disputes involving youth that occur in families, in educational settings, and in the community at large;

(e) Adult criminal offenses and disputes involving juvenile, adult, or community victims when appropriate, which shall be determined according to the policies and procedures provided for in section 25-2918; and

(f) Contested guardianship and contested conservatorship proceedings.

(2) Restorative justice practices at an approved center may be used in addition to any other condition, consequence, or sentence imposed by a court, a probation officer, a diversion program, a school, or another community program.

(3) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25; Laws 2011, LB157, § 2; Laws 2019, LB595, § 9.
Effective date September 1, 2019.

25-2912 Restorative justice or dispute resolution process; procedures.

Before the restorative justice or dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

Source: Laws 1991, LB 90, § 12; Laws 2019, LB595, § 10.
Effective date September 1, 2019.

25-2912.01 Restorative justice practices, restorative justice services, or restorative justice programs; activities to repair harm.

Restorative justice practices, restorative justice services, or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate. By engaging the parties to the offense or harm in voluntary dialogue, restorative justice provides an opportunity for healing for the victim and the individual who harmed the victim by:

(1) Holding the individual who caused harm accountable and providing the individual a platform to accept responsibility and gain empathy for the harm he or she caused to the victim and community;

(2) Providing the victim a platform to describe the impact that the harm had upon himself or herself or his or her family and to identify detriments experienced or any losses incurred;

(3) Providing the opportunity to enter into a reparation plan agreement; and

(4) Enabling the victim and the individual who caused harm the opportunity to agree on consequences to repair the harm, to the extent possible. This includes, but is not limited to, apologies, community service, reparation, restitution, restoration, and counseling.

Source: Laws 2019, LB595, § 11.

Effective date September 1, 2019.

25-2912.02 Best practices; policies and procedures.

The office and the approved centers shall strive to conduct restorative justice programs in accordance with best practices, including evidence-based programs, and shall adopt policies and procedures to accomplish this goal.

Source: Laws 2019, LB595, § 12.

Effective date September 1, 2019.

25-2913 Mediators and restorative justice facilitators; qualifications; compensation; powers and duties.

(1) Mediators and restorative justice facilitators of approved centers shall have completed at least thirty hours of basic mediation training, including conflict resolution techniques, neutrality, agreement writing, and ethics. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) In addition to the basic mediation training required under subsection (1) of this section:

(a) For disputes involving marital dissolution, parenting, or child custody, mediators of approved centers shall have additional training in family mediation; and

(b) For disputes involving harm done to others or the community, restorative justice facilitators of approved centers shall have additional restorative justice training that has been approved by the office. Such training should include, but not be limited to, topics such as restorative justice basics, trauma-informed practices, juvenile developmental characteristics, and crime victimization.

(3) An approved center may provide for the compensation of mediators and restorative justice facilitators, utilize the services of volunteer mediators and restorative justice facilitators, or utilize the services of both paid and volunteer mediators and restorative justice facilitators.

(4) The mediator or restorative justice facilitator shall provide an opportunity for the parties to achieve a mutually acceptable resolution of their dispute, in joint or separate sessions, as appropriate, including a reparation plan agreement regarding reparations through dialogue and negotiation. A mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(5) The mediator or restorative justice facilitator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(6) The mediator or restorative justice facilitator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(7) The mediator or restorative justice facilitator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator or restorative justice facilitator shall advise participants to obtain legal review of agreements as necessary.

Source: Laws 1991, LB 90, § 13; Laws 2019, LB595, § 13.
Effective date September 1, 2019.

25-2914 Confidentiality; exceptions.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.

(2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.

(3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.

(4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.

(5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Source: Laws 1991, LB 90, § 14; Laws 1994, LB 868, § 1; Laws 2019, LB595, § 14.
Effective date September 1, 2019.

25-2914.01 Verbal, written, or electronic communication; confidentiality; privileged; disclosure; when; activities of juvenile; limit on evidence.

(1) Any verbal, written, or electronic communication made in or in connection with matters referred to a restorative justice program which relates to the controversy or dispute undergoing restorative justice and agreements resulting from the restorative justice program, whether made to the restorative justice facilitator, the staff of an approved center, a party, or any other person attending the restorative justice program, shall be confidential and privileged.

(2) No admission, confession, or incriminating information obtained from a juvenile in the course of any restorative justice program that is conducted in conjunction with proceedings under the Dispute Resolution Act or as directed by a court, including, but not limited to, school-based disciplinary proceedings, juvenile diversion, court-ordered detention, or probation, shall be admitted into evidence against such juvenile, except as rebuttal or impeachment evidence, in any future adjudication hearing under the Nebraska Juvenile Code or in any criminal proceeding. Such admission, confession, or incriminating information may be considered by a court at sentencing or by a juvenile court during disposition proceedings.

(3) Confidential communications and materials are subject to disclosure when all parties to the restorative justice program agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the restorative justice program or the agreement.

(4) This section shall not apply if:

(a) A party brings an action against the restorative justice facilitator or approved center;

(b) The communication was made in furtherance of a crime or fraud;

(c) The communication is required to be reported under section 28-711 and is a new allegation of child abuse or neglect which was not previously known or reported; or

(d) This section conflicts with other legal requirements.

Source: Laws 2019, LB595, § 15.

Effective date September 1, 2019.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

25-2915 Immunity; exceptions.

No mediator, restorative justice facilitator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of restorative justice or dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

Source: Laws 1991, LB 90, § 15; Laws 2019, LB595, § 16.

Effective date September 1, 2019.

25-2916 Agreement; contents.

(1) If the parties involved in mediation reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If

a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) If the parties involved in a restorative justice program reach a reparation plan agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the reparations agreed upon by the parties to repair the specific circumstances of the offense. These may include, but are not limited to, service to the victim, an apology to the victim, financial restitution, services for the individual who caused the harm, community service, or any other reparation agreed upon by the parties. The agreement shall specify the time period during which such individual must comply with the requirements specified therein.

Source: Laws 1991, LB 90, § 16; Laws 2019, LB595, § 17.
Effective date September 1, 2019.

25-2917 Tolling of civil statute of limitations; when.

During the period of the restorative justice or dispute resolution process, any applicable civil statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last restorative justice or mediation session. This period shall be no longer than sixty days without consent of all the parties.

Source: Laws 1991, LB 90, § 17; Laws 2019, LB595, § 18.
Effective date September 1, 2019.

25-2918 Rules and regulations.

(1) The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

(2) The office may adopt and promulgate policies and procedures to carry out the Dispute Resolution Act.

Source: Laws 1991, LB 90, § 18; Laws 2019, LB595, § 19.
Effective date September 1, 2019.

25-2919 Application of act.

The Dispute Resolution Act shall apply only to approved centers and mediators and restorative justice facilitators of such centers.

Source: Laws 1991, LB 90, § 19; Laws 2019, LB595, § 20.
Effective date September 1, 2019.

25-2920 Director; report.

The director shall provide an annual report regarding the implementation of the Dispute Resolution Act. The report shall be available to the public on the Supreme Court's web site. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, and any recommendations to address problems.

Source: Laws 1991, LB 90, § 20; Laws 2012, LB782, § 29; Laws 2019, LB595, § 21.
Effective date September 1, 2019.

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 (9) of section 25-2908 and section 33-155. The fund shall be used to supplement the administration of the office and the support of the approved centers. 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; Laws 2011, LB378, § 18; Laws 2019, LB595, § 22.

Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 35**UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED
DISCLOSURE OF INTIMATE IMAGES**

Section

- 25-3501. Act, how cited.
- 25-3502. Definitions.
- 25-3503. Civil action.
- 25-3504. Exceptions to liability.
- 25-3505. Remedies.
- 25-3506. Statute of limitations.
- 25-3507. Construction.
- 25-3508. Uniformity of application and construction.
- 25-3509. Plaintiff's privacy.

25-3501 Act, how cited.

Sections 25-3501 to 25-3508 shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

Source: Laws 2019, LB680, § 1.

Effective date September 1, 2019.

25-3502 Definitions.

In the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act:

(1) Consent means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(2) Depicted individual means an individual whose body is shown in whole or in part in an intimate image.

(3) Disclosure means transfer, publication, or distribution to another person. Disclose has a corresponding meaning.

(4) Identifiable means recognizable by a person other than the depicted individual:

(A) from an intimate image itself; or

(B) from an intimate image and identifying characteristic displayed in connection with the intimate image.

(5) Identifying characteristic means information that may be used to identify a depicted individual.

(6) Individual means a human being.

(7) Intimate image means a photograph, film, video recording, or other similar medium that shows:

(A) the uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) a depicted individual engaging in or being subjected to sexual conduct.

(8) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) Sexual conduct includes:

(A) masturbation;

(B) genital, anal, or oral sex;

(C) sexual penetration of, or with, an object;

(D) bestiality; or

(E) the transfer of semen onto a depicted individual.

Source: Laws 2019, LB680, § 2.

Effective date September 1, 2019.

25-3503 Civil action.

(a) In this section:

(1) Harm includes physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.

(2) Private means:

(A) created or obtained under circumstances in which a depicted individual had a reasonable expectation of privacy; or

(B) made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(b) Except as otherwise provided in section 25-3504, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) the depicted individual did not consent to the disclosure;

(2) the intimate image was private; and

(3) the depicted individual was identifiable.

(c) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image which is the subject of an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act or that the individual lacked a reasonable expectation of privacy:

- (1) consent to creation of the image; or
- (2) previous consensual disclosure of the image.

(d) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body depicted in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

Source: Laws 2019, LB680, § 3.

Effective date September 1, 2019.

25-3504 Exceptions to liability.

(a) In this section:

(1) Child means an unemancipated individual who is less than nineteen years of age.

(2) Parent means an individual recognized as a parent under law of this state other than the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

(b) A person is not liable under the act if the person proves that disclosure of, or a threat to disclose, an intimate image was:

(1) made in good faith in:

(A) law enforcement;

(B) a legal proceeding; or

(C) medical education or treatment;

(2) made in good faith in the reporting or investigation of:

(A) unlawful conduct; or

(B) unsolicited and unwelcome conduct;

(3) related to a matter of public concern or public interest; or

(4) reasonably intended to assist the depicted individual.

(c) Subject to subsection (d) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under the act for a disclosure or threatened disclosure of an intimate image, as defined in subdivision (7)(A) of section 25-3502, of the child.

(d) If a defendant asserts an exception to liability under subsection (c) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(1) prohibited by law other than the act; or

(2) made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(e) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

Source: Laws 2019, LB680, § 4.

Effective date September 1, 2019.

25-3505 Remedies.

(a) In an action under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, a prevailing plaintiff may recover as compensation:

(1)(A) economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress whether or not accompanied by other damages; or

(B) if the actual damages are incapable of being quantified or difficult to quantify, presumed damages not to exceed ten thousand dollars against each defendant in an amount that bears a reasonable relationship to the probable damages incurred by the prevailing plaintiff. In determining the amount of presumed damages under subdivision (a)(1)(B) of this section, consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors; and

(2) an amount equal to any monetary gain made by the defendant from disclosure of the intimate image.

(b) In an action under the act, the court may award a prevailing plaintiff:

(1) reasonable attorney's fees and costs; and

(2) additional relief, including injunctive relief.

(c) The act does not affect a right or remedy available under law of this state other than the act.

Source: Laws 2019, LB680, § 5.

Effective date September 1, 2019.

25-3506 Statute of limitations.

(a) An action under subsection (b) of section 25-3503 for:

(1) an unauthorized disclosure may not be brought later than four years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(2) a threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) This section is subject to section 25-213.

Source: Laws 2019, LB680, § 6.

Effective date September 1, 2019.

25-3507 Construction.

(a) In an action brought under the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, no provider or user of an interactive computer service shall be treated as a person disclosing any information provided by another information content provider unless the provider or user of such interactive computer service is responsible, in whole or in part, for the creation or development of the information provided through the Internet or any other interactive service.

(b) No provider or user of an interactive computer service shall be held liable under the act on account of:

(1) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(2) any action taken to enable or make available to any information content provider or others the technical means to restrict access to material described in subdivision (b)(1) of this section.

(c) Nothing in the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act shall be construed to impose liability on an interactive computer service for content provided by another person.

(d) The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act must be construed to be consistent with 47 U.S.C. 230, as such section existed on January 1, 2019.

(e) The act may not be construed to alter the law of this state on sovereign immunity.

(f) For purposes of this section, information content provider and interactive computer service have the same meanings as in 47 U.S.C. 230, as such section existed on January 1, 2019.

Source: Laws 2019, LB680, § 7.
Effective date September 1, 2019.

25-3508 Uniformity of application and construction.

In applying and construing the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images 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 2019, LB680, § 8.
Effective date September 1, 2019.

25-3509 Plaintiff's privacy.

In any action brought pursuant to the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images 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 2019, LB680, § 9.
Effective date September 1, 2019.

Cross References

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, see section 25-3501.

CHAPTER 27

COURTS; RULES OF EVIDENCE

Article.

4. Relevancy and Its Limits. 27-404 to 27-413.
8. Hearsay. 27-801.

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; evidence of victim's consent; when not admissible.
- 27-413. Offense of sexual assault, defined.

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 28-322.05, 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; Laws 2019, LB519, § 2.
Effective date September 1, 2019.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition; evidence of victim's consent; when not admissible.

(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.

(4) Evidence of the victim's consent is not admissible in any civil proceeding involving alleged:

(a) Sexual penetration when the actor is nineteen years of age or older and the victim is less than sixteen years of age; or

(b) Sexual contact when the actor is nineteen years of age or older and the victim is less than fifteen years of age.

Source: Laws 2009, LB97, § 3; Laws 2019, LB478, § 1.
Effective date May 18, 2019.

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 communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, sexual abuse of a protected individual under section 28-322.04, sexual abuse of a detainee under section 28-322.05, an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.

Source: Laws 2009, LB97, § 4; Laws 2015, LB294, § 8; Laws 2019, LB519, § 3.
Effective date September 1, 2019.

ARTICLE 8

HEARSAY

Section

27-801. Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

27-801 Rule 801. Definitions; statement, declarant, hearsay; statements which are not hearsay.

The following definitions apply under this article:

(1) A statement is (a) an oral or written assertion or (b) nonverbal conduct of a person, if it is intended by him or her as an assertion;

(2) A declarant is a person who makes a statement;

(3) Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement (i) is inconsistent with his or her testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, (ii) is consistent with his or her testimony and is offered to rebut an express or implied charge against him or her of recent fabrication or improper influence or motive, or (iii) identifies a person as someone the declarant perceived earlier; or

(b) The statement is offered against a party and is (i) his or her own statement, in either his or her individual or a representative capacity, (ii) a statement of which he or she has manifested his or her adoption or belief in its truth, (iii) a statement by a person authorized by him or her to make a statement concerning the subject, (iv) a statement by his or her agent or servant

within the scope of his or her agency or employment, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Source: Laws 1975, LB 279, § 55; Laws 2019, LB392, § 1.
Effective date September 1, 2019.

Cross References

Electronic recordation of statements in custodial interrogation, admissibility, see sections 29-4501 to 29-4508.

CHAPTER 28

CRIMES AND PUNISHMENTS

Article.

1. Provisions Applicable to Offenses Generally.
 - (a) General Provisions. 28-101, 28-105.
 - (b) Discrimination-Based Offenses. 28-115.
 - (d) Victims of Sex Trafficking of a Minor or Labor Trafficking of a Minor. 28-117.
3. Offenses against the Person.
 - (a) General Provisions. 28-310.01 to 28-345.
4. Drugs and Narcotics. 28-401 to 28-474.
5. Offenses against Property. 28-513.
6. Offenses Involving Fraud. 28-611 to 28-644.
7. Offenses Involving the Family Relation. 28-707 to 28-713.
8. Offenses Relating to Morals. 28-806, 28-813.01.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-916.01 to 28-936.
10. Offenses against Animals. 28-1009.01.
11. Gambling. 28-1107.
12. Offenses against Public Health and Safety. 28-1206.
13. Miscellaneous Offenses.
 - (c) Telephone Communications. 28-1310.
14. Noncode Provisions.
 - (c) Tobacco, Electronic Nicotine Delivery Systems, or Alternative Nicotine Products. 28-1418 to 28-1429.03.
 - (k) Child Pornography Prevention Act. 28-1463.03, 28-1463.05.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section

- 28-101. Code, how cited.
- 28-105. Felonies; classification of penalties; sentences; where served; eligibility for probation.

(b) DISCRIMINATION-BASED OFFENSES

- 28-115. Criminal offense against a pregnant woman; enhanced penalty.

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR OR LABOR TRAFFICKING OF A MINOR

- 28-117. Department of Health and Human Services; information on programs and services.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1357 and 28-1601 to 28-1603 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 956, § 12; Laws 1986, LB 969, § 1; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws

1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 571, § 2; Laws 1990, LB 1018, § 1; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11; Laws 2011, LB20, § 1; Laws 2011, LB226, § 1; Laws 2011, LB667, § 1; Laws 2013, LB3, § 1; Laws 2013, LB44 § 1; Laws 2014, LB403, § 1; Laws 2014, LB863, § 15; Laws 2015, LB390, § 1; Laws 2016, LB136, § 1; Laws 2016, LB934, § 1; Laws 2016, LB1009, § 1; Laws 2016, LB1106, § 3; Laws 2017, LB289, § 2; Laws 2017, LB487, § 2; Laws 2018, LB931, § 1; Laws 2018, LB990, § 1; Laws 2019, LB7, § 1; Laws 2019, LB519, § 4; Laws 2019, LB686, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB7, section 1, with LB519, section 4, and LB686, section 1, to reflect all amendments.

Note: Changes made by LB7 and LB519 became effective September 1, 2019. Changes made by LB686 became operative September 1, 2019.

28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into ten classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum—life imprisonment Minimum—twenty years imprisonment
Class IC felony	Maximum—fifty years imprisonment Mandatory minimum—five years imprisonment
Class ID felony	Maximum—fifty years imprisonment Mandatory minimum—three years imprisonment
Class II felony	Maximum—fifty years imprisonment Minimum—one year imprisonment
Class IIA felony	Maximum—twenty years imprisonment Minimum—none
Class III felony	Maximum—four years imprisonment and two years post-release supervision or

	twenty-five thousand dollars fine, or both
	Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IIIA felony	Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both
	Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IV felony	Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both
	Minimum—none for imprisonment and none for post-release supervision

(2) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 29-2266.02.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) Any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(8) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

Source: Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1; Laws 2002, Third Spec. Sess., LB 1, § 1; Laws 2011, LB12, § 1; Laws 2015, LB268, § 6; Laws 2015, LB605, § 6; Laws 2016, LB1094, § 2; Referendum 2016, No. 426; Laws 2019, LB686, § 2.

Operative date September 1, 2019.

(b) DISCRIMINATION-BASED OFFENSES

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Except as provided in subsection (2) of this section, 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:

- (a) Assault in the first degree, section 28-308;
- (b) Assault in the second degree, section 28-309;
- (c) Assault in the third degree, section 28-310;
- (d) Assault by strangulation or suffocation, section 28-310.01;
- (e) Sexual assault in the first degree, section 28-319;
- (f) Sexual assault in the second or third degree, section 28-320;
- (g) Sexual assault of a child in the first degree, section 28-319.01;
- (h) Sexual assault of a child in the second or third degree, section 28-320.01;
- (i) Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;
- (j) Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;
- (k) Sexual abuse of a protected individual in the first or second degree, section 28-322.04;
- (l) Sexual abuse of a detainee under section 28-322.05;
- (m) Domestic assault in the first, second, or third degree, section 28-323;
- (n) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;
- (o) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;
- (p) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;
- (q) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;
- (r) Assault by a confined person, section 28-932;
- (s) Confined person committing offenses against another person, section 28-933; and
- (t) Proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198.

(2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.

(3) 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; Laws 2014, LB811, § 1; Laws 2016, LB1094, § 4; Laws 2019, LB141, § 1; Laws 2019, LB519, § 5.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB141, section 1, with LB519, section 5, to reflect all amendments.

(d) VICTIMS OF SEX TRAFFICKING OF A MINOR
OR LABOR TRAFFICKING OF A MINOR

28-117 Department of Health and Human Services; information on programs and services.

On or before December 1, 2019, the Department of Health and Human Services shall make publicly available information on programs and services available for referral by the department to respond to the safety and needs of children reported or suspected to be victims of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and their families. The department shall develop this information in consultation with representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors.

Source: Laws 2019, LB519, § 12.
Effective date September 1, 2019.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section

- 28-310.01. Assault by strangulation or suffocation; penalty; affirmative defense.
- 28-311.08. Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.
- 28-311.09. Harassment protection order; violation; penalty; procedure; costs; enforcement.
- 28-311.11. Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.
- 28-318. Terms, defined.
- 28-322.01. Sexual abuse of an inmate or parolee.
- 28-322.05. Sexual abuse of a detainee; penalty.
- 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; reporting form; contents.
- 28-345. Department of Health and Human Services; permanent file; rules and regulations.

(a) GENERAL PROVISIONS

28-310.01 Assault by strangulation or suffocation; penalty; affirmative defense.

(1) A person commits the offense of assault by strangulation or suffocation if the person knowingly and intentionally:

(a) Impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or

(b) Impedes the normal breathing of another person by covering the mouth and nose of the person.

(2) An offense is committed under this section regardless of whether a visible injury resulted.

(3) Except as provided in subsection (4) of this section, a violation of this section is a Class IIIA felony.

(4) A violation of this section is a Class IIA felony if:

(a) The person used or attempted to use a dangerous instrument while committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of a violation of this section.

(5) It is an affirmative defense that an act constituting strangulation or suffocation was the result of a legitimate medical procedure.

Source: Laws 2004, LB 943, § 2; Laws 2015, LB605, § 13; Laws 2019, LB141, § 2.

Effective date September 1, 2019.

28-311.08 Unlawful intrusion; photograph, film, or record image or video of intimate area; distribute or make public; penalty; court; duties; registration under Sex Offender Registration Act; statute of limitations.

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent in a place of solitude or seclusion. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(2) It shall be unlawful for any person to knowingly and intentionally photograph, film, or otherwise record an image or video of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public regardless of whether such other person is located in a public or private place. Violation of this subsection is a Class IV felony.

(3) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person recorded in violation of subsection (2) of this section without that person's consent. A first or second violation of this subsection is a Class IIA felony. A third or subsequent violation of this subsection is a Class II felony.

(4) It shall be unlawful for any person to knowingly and intentionally distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct (a) if the other person had a reasonable expectation that the image would remain private, (b) knowing the other person did not consent to distributing or making public the image or video, and (c) if distributing or making public the image or video serves no legitimate purpose. Violation of this subsection is a Class I misdemeanor. A second or subsequent violation of this subsection is a Class IV felony.

(5) It shall be unlawful for any person to threaten to distribute or otherwise make public an image or video of another person's intimate area or of another person engaged in sexually explicit conduct with the intent to intimidate, threaten, or harass any person. Violation of this subsection is a Class I misdemeanor.

(6) As part of sentencing following a conviction for a violation of subsection (1), (2), or (3) of this section, the court shall make a finding as to the ages of the defendant and the victim at the time the offense occurred. If the defendant is found to have been nineteen years of age or older and the victim is found to have been less than eighteen years of age at such time, then the defendant shall be required to register under the Sex Offender Registration Act.

(7) No person shall be prosecuted under this section unless the indictment for such offense is found by a grand jury or a complaint filed before a magistrate within three years after the later of:

(a) The commission of the crime;

(b) Law enforcement's or a victim's receipt of actual or constructive notice of either the existence of a video or other electronic recording made in violation of this section or the distribution of images, video, or other electronic recording made in violation of this section; or

(c) The youngest victim of a violation of this section reaching the age of twenty-one years.

(8) For purposes of this section:

(a) Intimate area means the naked or undergarment-clad genitalia, pubic area, buttocks, or female breast of an individual;

(b) Intrude means either:

(i) Viewing another person in a state of undress as it is occurring; or

(ii) Recording another person in a state of undress by video, photographic, digital, or other electronic means; and

(c) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

Source: Laws 1996, LB 908, § 1; Laws 2011, LB61, § 1; Laws 2014, LB998, § 2; Laws 2015, LB605, § 17; Laws 2019, LB630, § 1. Effective date September 1, 2019.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-311.09 Harassment protection order; violation; penalty; procedure; costs; enforcement.

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The harass-

ment protection order shall specify to whom relief under this section was granted.

(2) The petition for a harassment protection order shall state the events and dates or approximate dates of acts constituting the alleged harassment, including the most recent and most severe incident or incidents.

(3) A petition for a harassment protection order shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class II misdemeanor.

(5)(a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the harassment protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the incidents that are the basis for the application for a harassment protection order, including the most severe incident, and the date or approximate date of such incidents. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary ex parte and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final harassment protection order forms shall be the only such forms used in this state.

(7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a harassment protection order as a petition for a

sexual assault protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If a petition is dismissed without a hearing, it shall be dismissed without prejudice. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a harassment protection order as a petition for a sexual assault protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance of any temporary ex parte or final harassment protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the harassment protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the harassment protection order will be granted and remain in effect and further service of

such notice described in this subsection shall not be required for purposes of prosecution under this section.

(c) A temporary ex parte harassment protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer may, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a harassment protection order issued pursuant to this section or a violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 and (b) a petitioner under this section provides the peace officer with a copy of a harassment protection order or the peace officer determines that such an order exists after communicating with the local law enforcement agency or a person protected under a valid foreign harassment protection order recognized pursuant to section 28-311.10 provides the peace officer with a copy of such order.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the harassment protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the harassment.

(12) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information except for entry into state and federal data bases for protection order enforcement.

Source: Laws 1998, LB 218, § 6; Laws 2012, LB310, § 1; Laws 2019, LB532, § 1.

Operative date January 1, 2020.

28-311.11 Sexual assault protection order; violation; penalty; procedure; renewal; enforcement.

(1) Any victim of a sexual assault offense may file a petition and affidavit for a sexual assault protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a sexual assault protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b)

harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner. The sexual assault protection order shall specify to whom relief under this section was granted.

(2) The petition for a sexual assault protection order shall state the events and dates or approximate dates of acts constituting the sexual assault offense, including the most recent and most severe incident or incidents.

(3) A petition for a sexual assault protection order shall be filed with the clerk of the district court and the proceeding may be heard by the county court or the district court as provided in section 25-2740.

(4) A petition for a sexual assault protection order may not be withdrawn except upon order of the court. A sexual assault protection order shall specify that it is effective for a period of one year unless renewed pursuant to subsection (12) of this section or otherwise dismissed or modified by the court. Any person, except the petitioner, who knowingly violates a sexual assault protection order after service or notice as described in subdivision (9)(b) of this section shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a sexual assault protection order shall be guilty of a Class IV felony.

(5)(a) Fees to cover costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the sexual assault protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault protection order seeking only the relief provided by this section against the respondent.

(6) The clerk of the district court shall make available standard application and affidavit forms for issuance and renewal of a sexual assault protection order with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a sexual assault protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary ex parte and final sexual assault protection order forms and provide a copy of such forms to all clerks of the district courts in this state. Such standard temporary ex parte and final sexual assault protection order forms shall be the only forms used in this state.

(7) A sexual assault protection order may be issued or renewed ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If a sexual assault protection order is not issued ex parte, the court shall immediately schedule an evidentiary

hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the application to be given to the respondent stating that he or she may show cause why such order should not be entered. Any notice provided to the respondent shall include notification that a court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If such ex parte order is issued or renewed without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court.

(8) A court may treat a petition for a sexual assault protection order as a petition for a harassment protection order or a domestic abuse protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

(9)(a) Upon the issuance or renewal of any temporary ex parte or final sexual assault protection order, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the sexual assault protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the sexual assault protection order upon the respondent and file its return thereon with the clerk of the court which issued the sexual assault protection order within fourteen days of the issuance of the initial or renewed sexual assault protection order. If any sexual assault protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

(b) If the respondent is present at a hearing convened pursuant to this section and the sexual assault protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section.

(c) A temporary ex parte sexual assault protection order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the ex parte order and:

(i) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(ii) The respondent has been properly served with notice of any hearing requested by the respondent or petitioner or upon the court's own motion and the respondent fails to appear at such hearing; or

(iii) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(10) A peace officer shall, with or without a warrant, arrest a person if (a) the officer has probable cause to believe that the person has committed a violation of a sexual assault protection order issued pursuant to this section or a violation of a valid foreign sexual assault protection order recognized pursuant to section 28-311.12 and (b) a petitioner under this section provides the peace officer with a copy of such order or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

(11) A peace officer making an arrest pursuant to subsection (10) of this section shall take such person into custody and take such person before the county court or the court which issued the sexual assault protection order within a reasonable time. At such time the court shall establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the sexual assault offense.

(12)(a) An order issued under subsection (1) of this section may be renewed annually. To request renewal of the order, the petitioner shall file a petition for renewal and affidavit in support thereof at any time within forty-five days prior to the date the order is set to expire, including the date the order expires.

(b) A sexual assault protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(i) The petitioner seeks no modification of the order; and

(ii)(A) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(B) The respondent indicates that he or she does not contest the renewal.

(c) The petition for renewal shall state the reasons a renewal is sought and shall be filed with the clerk of the district court, and the proceeding thereon may be heard by the county court or the district court as provided in section

25-2740. A petition for renewal will otherwise be governed in accordance with the procedures set forth in subsections (4) through (11) of this section. The renewed order shall specify that it is effective for one year commencing on the first calendar day after expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order.

(13) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal data bases for protection order enforcement.

(14) For purposes of this section, sexual assault offense means:

(a) Conduct amounting to sexual assault under section 28-319 or 28-320 or sexual assault of a child under section 28-319.01 or 28-320.01 or an attempt to commit any of such offenses; or

(b) Subjecting or attempting to subject another person to sexual contact or sexual penetration without his or her consent, as such terms are defined in section 28-318.

Source: Laws 2017, LB289, § 4; Laws 2019, LB532, § 2.
Operative date January 1, 2020.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.05, 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 also means 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 includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes 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, nonhealth, or nonlaw enforcement 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; Laws 2019, LB519, § 6.
Effective date September 1, 2019.

28-322.01 Sexual abuse of an inmate or parolee.

(1) A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

(2) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

Source: Laws 1999, LB 511, § 3; Laws 2001, LB 155, § 2; Laws 2004, LB 943, § 6; Laws 2019, LB519, § 7.
Effective date September 1, 2019.

28-322.05 Sexual abuse of a detainee; penalty.

(1) For purposes of this section:

(a) Detainee means an individual who has been:

(i) Arrested by a person;

(ii) Detained by a person, regardless of whether the detainee has been arrested or charged; or

(iii) Placed into the custody of a person, regardless of whether the detainee has been arrested or charged;

(b) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime; the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state; and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

(c) Person means an individual:

(i) Who is employed by a law enforcement agency, including an individual working under contract with the agency;

(ii) To whom the law enforcement agency has authorized or delegated authority to make arrests, to place a detainee in detention or custody, or to otherwise exercise control over a detainee or a detainee's activities; and

(iii) Who is not the spouse of a detainee.

(2) A person commits the offense of sexual abuse of a detainee if the person engages in sexual penetration or sexual contact with a detainee. It is not a defense to a charge under this section that the detainee consented to such sexual penetration or sexual contact.

(3) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

(4) Any person who engages in sexual penetration with a detainee is guilty of sexual abuse of a detainee in the first degree. Sexual abuse of a detainee in the first degree is a Class IIA felony.

(5) Any person who engages in sexual contact with a detainee is guilty of sexual abuse of a detainee in the second degree. Sexual abuse of a detainee in the second degree is a Class IIIA felony.

Source: Laws 2019, LB519, § 8.

Effective date September 1, 2019.

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;

(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; and

(e) Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, information on finding immediate medical assistance is available on the web site of the Department of Health and Human Services.

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, list agencies which offer alternatives to abortion, and include information on finding immediate medical assistance if she changes her mind after taking mifepristone and wants to continue her pregnancy. 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; Laws 2019, LB209, § 1.

Effective date September 1, 2019.

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; reporting form; contents.

(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;

(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;

(d) Materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late."; and

(e) Materials, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(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.

(5) The Department of Health and Human Services shall publish and make available on its web site materials designed to inform the woman that she may still have a viable pregnancy after taking mifepristone. The materials shall include the following statements: "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you change your mind and want to continue your pregnancy after taking mifepristone, it may not be too late." The materials shall also include information, including contact information, that will assist the woman in finding a medical professional who can help her continue her pregnancy after taking mifepristone.

(6) The Department of Health and Human Services shall review and update, as necessary, the materials, including contact information, regarding medical professionals who can help a woman continue her pregnancy after taking mifepristone.

(7)(a) The Department of Health and Human Services shall prescribe a reporting form which shall be used for the reporting of every attempt at continuing a woman's pregnancy after taking mifepristone as described in this section performed in this state. Such form shall include the following items:

- (i) The age of the pregnant woman;
- (ii) The location of the facility where the service was performed;
- (iii) The type of service provided;
- (iv) Complications, if any;
- (v) The name of the attending medical professional;
- (vi) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;
- (vii) The state of the pregnant woman's legal residence;
- (viii) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and
- (ix) Such other information as may be prescribed in accordance with section 71-602.

(b) The completed form shall be signed by the attending medical professional and sent to the department within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The reporting form shall not include the name of the person for whom the service was provided. The reporting form shall be confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12; Laws 2019, LB209, § 2. Effective date September 1, 2019.

Cross References

Uniform Credentialing Act, see section 38-101.

28-345 Department of Health and Human Services; permanent file; rules and regulations.

The Department of Health and Human Services shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms and reporting forms regarding attempts at continuing a woman's pregnancy after taking mifepristone pursuant to such rules and regulations as established by the department, which compilations shall be a matter of public record. Under no circumstances shall the compilations of information include the name of any attending physician or identify in any respect facilities where abortions are performed. The department, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1977, LB 38, § 60; Laws 1979, LB 316, § 10; Laws 1996, LB 1044, § 64; Laws 2007, LB296, § 30; Laws 2019, LB209, § 3. Effective date September 1, 2019.

ARTICLE 4
DRUGS AND NARCOTICS

Section

28-401. Terms, defined.

28-473. Transferred to section 38-1,144.

28-474. Transferred to section 38-1,145.

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means 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 means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, 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, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means 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 means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means 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 means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (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 does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana means 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.

(b) Marijuana does 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, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration or obtained pursuant to sections 28-463 to 28-468.

(c) Marijuana does not include hemp.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means 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.

(e) When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(15) Manufacture means 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 includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does 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;

(16) Narcotic drug means 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 does not include decocainized coca leaves or ex-

tracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate means 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 does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(18) Opium poppy means the plant of the species *Papaver somniferum* L., except the seeds thereof;

(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(21) Practitioner means 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;

(22) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(23) Immediate precursor means 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;

(24) State means the State of Nebraska;

(25) Ultimate user means 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;

(26) Hospital has the same meaning as in section 71-419;

(27) Cooperating individual means 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;

(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus *cannabis* or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from (i) industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701 or (ii) hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(29) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(30) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue 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 or controlled substance analogue. 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;

(31)(a) Controlled substance analogue means 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 does 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, 2014, (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, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(32) Anabolic steroid means 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 does 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;

(33) Chart order means 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 does not include a prescription;

(34) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(35) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(36) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(37) Reverse distributor means 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;

(38) Signature means 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;

(39) Facsimile means 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;

(40) Electronic signature has the definition found in section 86-621;

(41) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(42) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(43) Compounding has the same meaning as in section 38-2811;

(44) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body; and

(45) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3; Laws 2018, LB1034, § 1; Laws 2019, LB657, § 22.

Operative date May 31, 2019.

Cross References

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

Nebraska Hemp Farming Act, see section 2-501.

28-473 Transferred to section 38-1,144.

28-474 Transferred to section 38-1,145.

ARTICLE 5

OFFENSES AGAINST PROPERTY

Section

28-513. Theft by extortion.

28-513 Theft by extortion.

(1) A person commits theft if he or she obtains property, money, or other thing of value of another by threatening to:

- (a) Inflict bodily injury on anyone or commit any other criminal offense;
- (b) Accuse anyone of a criminal offense;
- (c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his or her credit or business repute;
- (d) Take or withhold action as an official, or cause an official to take or withhold action;
- (e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property, money, or other thing of value is not demanded or received for the benefit of the group in whose interest the actor purports to act;
- (f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) Distribute or otherwise make public an image or video of a person's intimate area or of a person engaged in sexually explicit conduct without that person's consent.

(2) It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) of this section that the property, money, or other thing of value obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

Source: Laws 1977, LB 38, § 112; Laws 2019, LB630, § 2.
Effective date September 1, 2019.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section

- 28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
- 28-635. Repealed. Laws 2019, LB7, § 7.
- 28-641. Counterfeit airbags; act, how cited.
- 28-642. Counterfeit airbags; terms, defined.
- 28-643. Counterfeit airbags; prohibited acts.
- 28-644. Counterfeit airbags; violations; penalties.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, child support credit, spousal support credit, 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 IIA felony if the amount of the check, draft, assignment of funds, or order is five thousand dollars or more;
- (b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more, but less than five thousand dollars;
- (c) A Class I misdemeanor 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; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than five 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; Laws 2015, LB605, § 34; Laws 2019, LB514, § 1.
Effective date September 1, 2019.

28-635 Repealed. Laws 2019, LB7, § 7.

28-641 Counterfeit airbags; act, how cited.

Sections 28-641 to 28-644 shall be known and may be cited as the Counterfeit Airbag Prevention Act.

Source: Laws 2019, LB7, § 2.
Effective date September 1, 2019.

28-642 Counterfeit airbags; terms, defined.

For purposes of the Counterfeit Airbag Prevention Act, unless the context otherwise requires:

(1) Airbag means a motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system;

(2) Counterfeit supplemental restraint system component means a supplemental restraint system component that displays a mark identical or substantially similar to the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from such manufacturer or supplier;

(3) Nonfunctional airbag means an airbag that meets any of the following criteria:

(a) The airbag was previously deployed or damaged;

(b) The airbag has an electric fault that is detected by the motor vehicle's diagnostic system when the installation procedure is completed and (i) the motor vehicle is returned to the customer who requested the work to be performed or (ii) ownership is intended to be transferred;

(c) The airbag includes a part or object installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed; or

(d) The airbag is subject to the prohibitions of subsection (j) of 49 U.S.C. 30120, as such section existed on January 1, 2019; and

(4) Supplemental restraint system means an inflatable restraint system as defined in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019, designed for use in conjunction with an active safety system. A supplemental restraint system includes one or more airbags and all components required to ensure that an airbag works as designed by the motor vehicle manufacturer, including both of the following:

(a) The airbag operates as necessary in the event of a crash; and

(b) The airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

Source: Laws 2019, LB7, § 3.

Effective date September 1, 2019.

28-643 Counterfeit airbags; prohibited acts.

A person violates the Counterfeit Airbag Prevention Act if the person does any of the following:

(1) Knowingly and intentionally manufactures, imports, installs, reinstalls, distributes, sells, or offers for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component or a nonfunctional airbag or does not meet federal safety requirements as provided in 49 C.F.R. 571.208, as such regulation existed on January 1, 2019;

(2) Knowingly and intentionally sells, installs, or reinstalls a device that causes a motor vehicle's diagnostic system to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraint system component or a nonfunctional airbag or when no airbag is installed;

(3) Knowingly and intentionally represents to another person that a counterfeit supplemental restraint system component or nonfunctional airbag installed in a motor vehicle is not a counterfeit supplemental restraint system component or a nonfunctional airbag; or

(4) Causes another person to violate this section or assists another person in violating this section.

Source: Laws 2019, LB7, § 4.

Effective date September 1, 2019.

28-644 Counterfeit airbags; violations; penalties.

(1) Except as otherwise provided in this section, a violation of the Counterfeit Airbag Prevention Act is a Class IV felony.

(2) A violation of the act is a Class IIIA felony if the defendant has been previously convicted of a violation of the act.

(3) A violation of the act is a Class III felony if the violation resulted in an individual suffering bodily injury.

(4) A violation of the act is a Class IIA felony if the violation resulted in an individual suffering serious bodily injury.

(5) A violation of the act is a Class II felony if the violation resulted in the death of an individual.

Source: Laws 2019, LB7, § 5.

Effective date September 1, 2019.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section

28-707. Child abuse; privileges not available; penalties.

28-710. Act, how cited; terms, defined.

28-713. Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.

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 through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3; Laws 2012, LB799, § 2; Laws 2013, LB255, § 1; Laws 2015, LB605, § 44; Laws 2019, LB519, § 9.

Effective date September 1, 2019.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-710 Act, how cited; terms, defined.

(1) Sections 28-710 to 28-727 shall be known and may be cited as the Child Protection and Family Safety Act.

(2) For purposes of the Child Protection and Family Safety Act:

(a) Alternative response means a comprehensive assessment of (i) child safety, (ii) the risk of future child abuse or neglect, (iii) family strengths and needs, and (iv) the provision of or referral for necessary services and support. Alternative response is an alternative to traditional response and does not include an investigation or a formal determination as to whether child abuse or neglect has occurred, and the subject of the report shall not be entered into the central registry of child protection cases maintained pursuant to section 28-718;

(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

(i) Placed in a situation that endangers his or her life or physical or mental health;

(ii) Cruelly confined or cruelly punished;

(iii) Deprived of necessary food, clothing, shelter, or care;

(iv) Left unattended in a motor vehicle if such minor child is six years of age or younger;

(v) Placed in a situation to be sexually abused;

(vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(vii) Placed in a situation to be a trafficking victim as defined in section 28-830;

(c) Comprehensive assessment means an analysis of child safety, risk of future child abuse or neglect, and family strengths and needs on a report of child abuse or neglect. Comprehensive assessment does not include a determination as to whether the child abuse or neglect occurred but does determine the need for services and support to address the safety of children and the risk of future abuse or neglect;

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

(e) Investigation means fact gathering related to the current safety of a child and the risk of future child abuse or neglect that determines whether child abuse or neglect has occurred and whether child protective services are needed;

(f) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the sheriff in unincorporated areas, and the Nebraska State Patrol;

(g) Out-of-home child abuse or neglect means child abuse or neglect occurring outside of a child's family home, including in day care homes, foster homes, day care centers, residential child-caring agencies as defined in section 71-1926, other child care facilities or institutions, and the community. Out-of-home child abuse or neglect also includes cases in which the subject of the

report of child abuse or neglect is not a member of the child's household, no longer has access to the child, is unknown, or cannot be identified;

(h) Review, Evaluate, and Decide Team means an internal team of staff within the department and shall include no fewer than two supervisors or administrators and two staff members knowledgeable on the policies and practices of the department, including, but not limited to, the structured review process. County attorneys, child advocacy centers, or law enforcement agency personnel may attend team reviews upon request of a party;

(i) Traditional response means an investigation by a law enforcement agency or the department pursuant to section 28-713 which requires a formal determination of whether child abuse or neglect has occurred; and

(j) Subject of the report of child abuse or neglect or subject of the report means the person or persons identified in the report as responsible for the child abuse or neglect.

Source: Laws 1977, LB 38, § 149; Laws 1979, LB 505, § 1; Laws 1982, LB 522, § 3; Laws 1985, LB 447, § 10; Laws 1988, LB 463, § 42; Laws 1992, LB 1184, § 9; Laws 1994, LB 1035, § 2; Laws 1996, LB 1044, § 71; Laws 1997, LB 119, § 1; Laws 2005, LB 116, § 1; Laws 2013, LB265, § 29; Laws 2014, LB853, § 1; Laws 2019, LB519, § 10.

Effective date September 1, 2019.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations.

(1) Unless an intake is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(a) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(b) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to

determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

(c) The department may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;

(d) The department shall, by the next working day after receiving a report of child abuse or neglect under this subsection of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken; and

(e) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

(2)(a) In addition to the responsibilities under subsection (1) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and without regard to the subject of the report, the department shall:

(i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729;

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and

(iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

(b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.

(3) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's

household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37; Laws 2014, LB853, § 5; Laws 2019, LB519, § 11.
Effective date September 1, 2019.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section

28-806. Public indecency; penalty.

28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

28-806 Public indecency; penalty.

(1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

(3) It shall not be a violation of this section for an individual to breast-feed a child in a public place.

Source: Laws 1977, LB 38, § 162; Laws 2019, LB209, § 4.
Effective date September 1, 2019.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense; forfeiture of property.

(1) It shall be unlawful for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. Violation of this subsection is a Class IIA felony.

(2) It shall be unlawful for a person under nineteen years of age to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers. Violation of this subsection is a Class I misdemeanor. A second or subsequent conviction under this subsection is a Class IV felony.

(3) It shall be an affirmative defense to a charge made pursuant to subsection (2) of this section that:

(a)(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; or

(b)(i) The defendant was less than eighteen years of age; (ii) the difference in age between the defendant and the child portrayed is less than four years; (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.

(4) Any person who violates subsection (1) or (2) of 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.

(5) In addition to the penalties provided in this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of this section.

(6) The definitions in section 28-1463.02 shall apply to this section.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15; Laws 2015, LB605, § 45; Laws 2016, LB1106, § 7; Laws 2019, LB630, § 3.

Effective date September 1, 2019.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section

28-916.01. Terms, defined.

28-919. Tampering with witness or informant; jury tampering; penalty.

28-922. Tampering with physical evidence; penalty; physical evidence, defined.

28-936. Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

28-916.01 Terms, defined.

As used in this section and sections 28-915, 28-915.01, 28-919, and 28-922, unless the context otherwise requires:

(1) Administrative proceeding shall mean any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

(2) Benefit shall mean gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he or she is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(3) Government shall include any branch, subdivision, or agency of the government of the state or any locality within it;

(4) Harm shall mean loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he or she is interested;

(5) Pecuniary benefit shall mean benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain;

(6) Public servant shall mean any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant, or otherwise, in performing a governmental function, but the term shall not include witnesses;

(7) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding; and

(8) Statement shall mean any representation, but shall include a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Source: Laws 1987, LB 451, § 2; Laws 2019, LB496, § 1.
Effective date September 1, 2019.

28-919 Tampering with witness or informant; jury tampering; penalty.

(1) A person commits the offense of tampering with a witness or informant if, believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(a) Testify or inform falsely;

(b) Withhold any testimony, information, document, or thing;

(c) Elude legal process summoning him or her to testify or supply evidence;
or

(d) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(2) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he or she attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(3) Tampering with witnesses or informants is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

(4) Jury tampering is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified as a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 204; Laws 1994, LB 906, § 1; Laws 2019, LB496, § 2.

Effective date September 1, 2019.

28-922 Tampering with physical evidence; penalty; physical evidence, defined.

(1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony, except that if such offense involves a pending criminal proceeding which alleges a violation of another offense classified:

(a) As a Class II misdemeanor or a lower classification or a violation of a city or village ordinance, the offense is a Class I misdemeanor; or

(b) As a Class II felony or a higher classification, the offense is a Class II felony.

Source: Laws 1977, LB 38, § 207; Laws 2019, LB496, § 3.

Effective date September 1, 2019.

28-936 Electronic communication device; possession within facility; provided to inmate; penalty; seizure; disposition.

(1) A person commits an offense if he or she intentionally introduces within a facility, or intentionally provides an inmate of a facility with, any electronic communication device. An inmate commits an offense if he or she intentionally procures, makes, or otherwise provides himself or herself with, or has in his or her possession, any electronic communication device.

(2) This section does not apply to:

(a) An attorney or an attorney's agent visiting an inmate who is a client of such attorney;

(b) The Public Counsel or any employee of his or her office;

(c) A peace officer acting under his or her authority;

(d) An emergency responder or a firefighter responding to emergency incidents within a facility; or

(e) Any person acting with the permission of the Director of Correctional Services or in accordance with rules, regulations, or policies of the Department of Correctional Services.

(3) For purposes of this section:

(a) Facility has the same meaning as in section 83-170; and

(b) Electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device. Electronic communication device does not include any device provided to an inmate by the Department of Correctional Services.

(4) A violation of this section is a Class I misdemeanor.

(5) An electronic communication device involved in a violation of this section shall be subject to seizure by the Department of Correctional Services or a peace officer, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

Source: Laws 2019, LB686, § 3.

Operative date September 1, 2019.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section

28-1009.01. Violence on a service animal; interference with a service animal; penalty.

28-1009.01 Violence on a service animal; interference with a service animal; penalty.

(1) A person commits the offense of violence on a service animal when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(2) A person commits the offense of interference with a service animal when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hard of hearing person, or a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward an animal as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf or hard of hearing, or physically limited person being served or assisted by the

animal shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including, but not limited to, braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling, or reading;

(c) Hard of hearing person means a person who is unable to hear air conduction thresholds at an average of forty decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including, but not limited to, having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees.

(5) Violence on a service animal or interference with a service animal is a Class III misdemeanor.

Source: Laws 1997, LB 814, § 1; Laws 2008, LB806, § 11; Laws 2019, LB248, § 5.

Effective date September 1, 2019.

ARTICLE 11

GAMBLING

Section

28-1107. Possession of a gambling device; penalty; affirmative defense.

28-1107 Possession of a gambling device; penalty; affirmative defense.

(1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) The owner or operator of a retail establishment who is not a manufacturer, distributor, or seller of mechanical amusement devices as defined under the Mechanical Amusement Device Tax Act, shall have an affirmative defense to possession of a gambling device described in subsection (1) of this section if the device bears an unexpired mechanical amusement device decal as required by such act. However, such affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment.

(3) Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, is hereby declared to be illegal.

(4) Possession of a gambling device is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 223; Laws 1978, LB 900, § 2; Laws 1979, LB 152, § 7; Laws 1987, LB 523, § 4; Laws 2019, LB538, § 1. Operative date January 1, 2020.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section

28-1206. Possession of a deadly weapon by a prohibited person; penalty.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1) A person commits the offense of possession of a deadly weapon by a prohibited person if he or she:

(a) Possesses a firearm, a knife, or brass or iron knuckles and he or she:

(i) Has previously been convicted of a felony;

(ii) Is a fugitive from justice;

(iii) Is the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or

(iv) Is on probation pursuant to a deferred judgment for a felony under section 29-2292; or

(b) Possesses a firearm or brass or iron knuckles and he or she has been convicted within the past seven years of a misdemeanor crime of domestic violence.

(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) Subdivision (1)(a)(i) of this section shall not prohibit:

(a) Possession of archery equipment for lawful purposes; or

(b) If in possession of a recreational license, possession of a knife for purposes of butchering, dressing, or otherwise processing or harvesting game, fish, or furs.

(5)(a) For purposes of this section, misdemeanor crime of domestic violence means a crime that:

(i) 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) Has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(iii) 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.

(b) For purposes of this section, misdemeanor crime of domestic violence also includes the following offenses, if committed by a person against his or her spouse, his or her former spouse, a person with whom he or she is or was involved in a dating relationship as defined in section 28-323, or 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:

(i) Assault in the third degree under section 28-310;

(ii) Stalking under subsection (1) of section 28-311.04;

(iii) False imprisonment in the second degree under section 28-315;

(iv) First offense domestic assault in the third degree under subsection (1) of section 28-323; or

(v) Any attempt or conspiracy to commit any of such offenses.

(c) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(i) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(ii) 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:

(A) The case was tried to a jury; or

(B) The person knowingly and intelligently waived the right to have the case tried to a jury.

(6) In addition, for purposes of this section:

(a) Archery equipment means:

(i) A longbow, recurve bow, compound bow, or nonelectric crossbow that is drawn or cocked with human power and released by human power; and

(ii) Target or hunting arrows, including arrows with broad, fixed, or removable heads or that contain multiple sharp cutting edges;

(b) Domestic violence protection order means a protection order issued pursuant to section 42-924;

(c) Harassment protection order means a protection order issued pursuant to section 28-311.09 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;

(d) Recreational license means a state-issued license, certificate, registration, permit, tag, sticker, or other similar document or identifier evidencing permission to hunt, fish, or trap for furs in the State of Nebraska; and

(e) Sexual assault protection order means a protection order issued pursuant to section 28-311.11 or that meets or exceeds the criteria set forth in section 28-311.12 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; Laws 2017, LB289, § 10; Laws 2017, LB478, § 1; Laws 2018, LB848, § 1; Laws 2019, LB686, § 4.
Operative date September 1, 2019.

ARTICLE 13

MISCELLANEOUS OFFENSES

(c) TELEPHONE COMMUNICATIONS

Section

28-1310. Intimidation by telephone call or electronic communication; penalty.

(c) TELEPHONE COMMUNICATIONS

28-1310 Intimidation by telephone call or electronic communication; penalty.

(1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to intimidate, threaten, or harass an individual, the person telephones such individual or transmits an electronic communication directly to such individual, whether or not conversation or an electronic response ensues, and the person:

(a) Uses obscene language or suggests any obscene act;

(b) Threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or

(c) Attempts to extort property, money, or other thing of value from such individual or any other person.

(2) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated or where it was received.

(3) Intimidation by telephone call or electronic communication is a Class III misdemeanor.

(4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.

Source: Laws 1977, LB 38, § 294; Laws 2002, LB 1105, § 433; Laws 2018, LB773, § 3; Laws 2019, LB630, § 4.
Effective date September 1, 2019.

ARTICLE 14

NONCODE PROVISIONS

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS, OR ALTERNATIVE NICOTINE PRODUCTS

Section

28-1418. Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of nineteen years; penalty.

Section

- 28-1418.01. Terms, defined.
- 28-1419. Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty.
- 28-1420. License requisite for sale; violation; penalty.
- 28-1421. License; where obtained; prohibited sales.
- 28-1423. License; term; fees; false swearing; penalty.
- 28-1424. License; rights of licensee.
- 28-1425. Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of nineteen years; penalty.
- 28-1427. Minor misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.
- 28-1429.01. Vending machines; legislative findings.
- 28-1429.02. Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.
- 28-1429.03. Self-service display; restrictions on use; violation; penalty.
- (k) CHILD PORNOGRAPHY PREVENTION ACT
- 28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts.
- 28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(c) TOBACCO, ELECTRONIC NICOTINE DELIVERY SYSTEMS,
OR ALTERNATIVE NICOTINE PRODUCTS

28-1418 Tobacco; electronic nicotine delivery systems; alternative nicotine products; use by person under age of nineteen years; penalty.

Whoever, being a person under the age of nineteen years, shall smoke cigarettes or cigars, use electronic nicotine delivery systems or alternative nicotine products, or use tobacco in any form whatever, in this state, shall be guilty of a Class V misdemeanor. Any person charged with a violation of this section may be free from prosecution if he or she furnishes evidence for the conviction of the person or persons selling or giving him or her the cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco.

Source: Laws 1911, c. 181, §§ 1, 2, 3, p. 561; R.S.1913, § 8846; C.S.1922, § 9847; C.S.1929, § 28-1021; R.S.1943, § 28-1020; Laws 1977, LB 40, § 103; R.R.S.1943, § 28-1020, (1975); Laws 2014, LB863, § 16; Laws 2019, LB149, § 1; Laws 2019, LB397, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 1, with LB397, section 1, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1418.01 Terms, defined.

For purposes of sections 28-1418 to 28-1429.03:

(1) Alternative nicotine product means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3)(a) Electronic nicotine delivery system means any product or device containing nicotine, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, tobacco, or tobacco derivatives;

(4) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(5) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of nineteen years to enter the premises unless accompanied by a parent or legal guardian.

Source: Laws 2014, LB863, § 17; Laws 2019, LB149, § 2; Laws 2019, LB397, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 2, with LB397, section 2, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1419 Tobacco; electronic nicotine delivery systems; alternative nicotine products; certain sales; penalty.

Whoever shall sell, give, or furnish, in any way, any tobacco in any form whatever, or any cigarettes, cigarette paper, electronic nicotine delivery systems, or alternative nicotine products, to any person under nineteen years of age, is guilty of a Class III misdemeanor for each offense.

Source: Laws 1885, c. 105, §§ 1, 2, p. 394; Laws 1903, c. 138, § 1, p. 643; R.S.1913, § 8847; C.S.1922, § 9848; C.S.1929, § 28-1022; R.S. 1943, § 28-1021; Laws 1977, LB 40, § 104; R.R.S.1943, § 28-1021, (1975); Laws 2014, LB863, § 18; Laws 2019, LB149, § 3; Laws 2019, LB397, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 3, with LB397, section 3, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1420 License requisite for sale; violation; penalty.

It shall be unlawful for any person, partnership, limited liability company, or corporation to sell, keep for sale, or give away in course of trade, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to anyone without first obtaining a license as provided in sections 28-1421 and 28-1422. It shall also be unlawful for any wholesaler to sell or deliver any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material to any person, partnership, limited liability company, or corporation who, at the time of such sale or delivery, is not the recipient of a valid tobacco license for the current year to retail the same as provided in such sections. It shall also be unlawful for any person, partnership, limited liability company, or corporation to purchase or receive, for purposes of resale, any cigars, tobacco, electronic nicotine delivery systems, cigarettes, or cigarette material if such person, partnership, limited liability company, or corporation is not the recipient of a valid tobacco license to retail such tobacco products at the time the same are purchased or received. Whoever shall be found guilty of violating this section shall be guilty of a Class III misdemeanor for each offense.

Source: Laws 1919, c. 180, § 1, p. 401; C.S.1922, § 9849; C.S.1929, § 28-1023; Laws 1941, c. 50, § 1, p. 242; C.S.Supp.,1941, § 28-1023; R.S.1943, § 28-1022; Laws 1977, LB 40, § 105; R.R.S.1943, § 28-1022, (1975); Laws 1993, LB 121, § 187; Laws 2019, LB149, § 4; Laws 2019, LB397, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 4, with LB397, section 4, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1421 License; where obtained; prohibited sales.

Licenses for the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material to persons nineteen years of age or over shall be issued to individuals, partnerships, limited liability companies, and corporations by the clerk or finance director of any city or village and by the county clerk of any county upon application duly made as provided in section 28-1422. The sale of cigarettes or cigarette materials that contain perfumes or drugs in

any form is prohibited and is not licensed by the provisions of this section. Only cigarettes and cigarette material containing pure white paper and pure tobacco shall be licensed.

Source: Laws 1919, c. 180, § 2, p. 401; C.S.1922, § 9850; C.S.1929, § 28-1024; R.S.1943, § 28-1023; Laws 1961, c. 128, § 1, p. 379; R.R.S.1943, § 28-1023, (1975); Laws 1993, LB 121, § 188; Laws 2019, LB149, § 5; Laws 2019, LB397, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 5, with LB397, section 5, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1423 License; term; fees; false swearing; penalty.

The term for which such license shall run shall be from the date of filing such application and paying such license fee to and including December 31 of the calendar year in which application for such license is made, and the license fee for any person, partnership, limited liability company, or corporation selling at retail shall be twenty-five dollars in cities of the metropolitan class, fifteen dollars in cities of the primary and first classes, and ten dollars in cities of all other classes and in towns and villages and in locations outside of the limits of cities, towns, and villages. Any person, partnership, limited liability company, or corporation selling annually in the aggregate more than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in any form, at wholesale, shall pay a license fee of one hundred dollars, and if such combined annual sales amount to less than one hundred fifty thousand cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco, the annual license fee shall be fifteen dollars. No wholesaler's license shall be issued in any year on a less basis than one hundred dollars per annum unless the applicant for the same shall file with such application a statement duly sworn to by himself or herself, or if applicant is a partnership, by a member of the firm, or if a limited liability company, by a member or manager of the company, or if a corporation, by an officer or manager thereof, that in the past such wholesaler's combined sales of cigars, packages of cigarettes, electronic nicotine delivery systems, and packages of tobacco in every form have not exceeded in the aggregate one hundred fifty thousand annually, and that such sales will not exceed such aggregate amount for the current year for which the license is to issue. Any person swearing falsely in such affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915 and such wholesaler's license shall be revoked until the full license fee is paid. If application for license is made after July 1 of any calendar year, the fee shall be one-half of the fee provided in this section.

Source: Laws 1919, c. 180, § 4, p. 402; C.S.1922, § 9852; Laws 1923, c. 136, § 1, p. 335; Laws 1927, c. 198, § 1, p. 565; C.S.1929, § 28-1026; R.S.1943, § 28-1025; Laws 1978, LB 748, § 20; R.R.S. 1943, § 28-1025, (1975); Laws 1993, LB 121, § 190; Laws 2019, LB149, § 6; Laws 2019, LB397, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 6, with LB397, section 6, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1424 License; rights of licensee.

The license provided for in sections 28-1421 and 28-1422 shall, when issued, authorize the sale of cigars, tobacco, electronic nicotine delivery systems, cigarettes, and cigarette material by the licensee and employees, to persons nineteen years of age or over, at the place of business described in such license for the term therein authorized, unless the license is forfeited as provided in section 28-1425.

Source: Laws 1919, c. 180, § 5, p. 402; C.S.1922, § 9853; C.S.1929, § 28-1027; R.S.1943, § 28-1026; Laws 1957, c. 100, § 2, p. 359; R.R.S.1943, § 28-1026, (1975); Laws 2019, LB149, § 7; Laws 2019, LB397, § 7.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 7, with LB397, section 7, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1425 Licensees; sale of tobacco, electronic nicotine delivery systems, or alternative nicotine products to persons under the age of nineteen years; penalty.

Any licensee who shall sell, give, or furnish in any way to any person under the age of nineteen years, or who shall willingly allow to be taken from his or her place of business by any person under the age of nineteen years, any cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products is guilty of a Class III misdemeanor. Any officer, director, or manager having charge or control, either separately or jointly with others, of the business of any corporation which violates sections 28-1419, 28-1420 to 28-1429, and 28-1429.03, if he or she has knowledge of such violation, shall be subject to the penalties provided in this section. In addition to the penalties provided in this section, such licensee shall be subject to the additional penalty of a revocation and forfeiture of his, her, their, or its license, at the discretion of the court before whom the complaint for violation of such sections may be heard. If such license is revoked and forfeited, all rights under such license shall at once cease and terminate.

Source: Laws 1919, c. 180, § 6, p. 402; C.S.1922, § 9854; C.S.1929, § 28-1028; R.S.1943, § 28-1027; Laws 1957, c. 100, § 3, p. 360; Laws 1977, LB 40, § 106; R.R.S.1943, § 28-1027, (1975); Laws 2014, LB863, § 19; Laws 2019, LB149, § 8; Laws 2019, LB397, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 8, with LB397, section 8, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1427 Minor misrepresenting age to obtain tobacco, electronic nicotine delivery systems, or alternative nicotine products; penalty.

Any person under the age of nineteen years who obtains cigars, tobacco, cigarettes, cigarette material, electronic nicotine delivery systems, or alternative nicotine products from a licensee by representing that he or she is of the age of nineteen years or over is guilty of a Class V misdemeanor.

Source: Laws 1919, c. 180, § 8, p. 403; C.S.1922, § 9856; C.S.1929, § 28-1030; R.S.1943, § 28-1029; Laws 1947, c. 98, § 1, p. 281; Laws 1977, LB 40, § 107; R.R.S.1943, § 28-1029, (1975); Laws 2014, LB863, § 20; Laws 2019, LB149, § 9; Laws 2019, LB397, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 9, with LB397, section 9, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

28-1429.01 Vending machines; legislative findings.

The Legislature finds that the incumbent health risks associated with using tobacco products have been scientifically proven. The Legislature further finds that the growing number of young people who start using tobacco products is staggering, and even more abhorrent are the ages at which such use begins. The Legislature has established an age restriction on the use of tobacco products. To ensure that the use of tobacco products among young people is discouraged to the maximum extent possible, it is the intent of the Legislature to ban the use of vending machines and similar devices to dispense tobacco products in facilities, buildings, or areas which are open to the general public within Nebraska.

Source: Laws 1992, LB 130, § 1; Laws 2019, LB149, § 10.
Operative date January 1, 2020.

28-1429.02 Vending machines; restrictions on use; violation; penalty; local ordinances; authorized.

(1) Except as provided in subsection (2) of this section, it shall be unlawful to dispense cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products from a vending machine or similar device. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second offense, the court shall order a six-month suspension of the offender's license to sell tobacco and electronic nicotine delivery systems, if any, and, upon conviction for a third or subsequent offense, the court shall order the permanent revocation of the offender's license to sell tobacco and electronic nicotine delivery systems, if any.

(2) Cigarettes, other tobacco products, electronic nicotine delivery systems, or alternative nicotine products may be dispensed from a vending machine or similar device when such machine or device is located in an area, office, business, plant, or factory which is not open to the general public or on the licensed premises of any establishment having a license issued under the Nebraska Liquor Control Act for the sale of alcoholic liquor for consumption on the premises when such machine or device is located in the same room in which the alcoholic liquor is dispensed.

(3) Nothing in this section shall be construed to restrict or prohibit a governing body of a city or village from establishing and enforcing ordinances at least as stringent as or more stringent than the provisions of this section.

Source: Laws 1992, LB 130, § 2; Laws 2014, LB863, § 21; Laws 2019, LB149, § 11; Laws 2019, LB397, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 11, with LB397, section 10, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

Cross References

Nebraska Liquor Control Act, see section 53-101.

28-1429.03 Self-service display; restrictions on use; violation; penalty.

(1) Except as provided in subsection (2) of this section and section 28-1429.02, it shall be unlawful to sell or distribute cigarettes, cigars, electronic

nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever through a self-service display. Any person violating this section is guilty of a Class III misdemeanor. In addition, upon conviction for a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the license issued under section 28-1421.

(2) Cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, or tobacco in any form whatever may be sold or distributed in a self-service display that is located in a tobacco specialty store or cigar shop as defined in section 53-103.08.

Source: Laws 2014, LB863, § 22; Laws 2015, LB118, § 1; Laws 2019, LB149, § 12; Laws 2019, LB397, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB149, section 12, with LB397, section 11, to reflect all amendments.

Note: Changes made by LB397 became effective September 1, 2019. Changes made by LB149 became operative January 1, 2020.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts.

(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 other than the defendant 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 other than the defendant 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.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18; Laws 2019, LB630, § 5.
Effective date September 1, 2019.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

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 other than the defendant 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 IIA 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; Laws 2015, LB605, § 58; Laws 2019, LB630, § 6.

Effective date September 1, 2019.

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, 29-119.
18. Motions and Issues on Indictment. 29-1823.
19. Preparation for Trial.
 - (c) Discovery. 29-1912 to 29-1924.
22. Judgment on Conviction.
 - (a) Judgment on Conviction. 29-2202.
 - (c) Probation. 29-2246 to 29-2268.
 - (h) Deferred Judgment. 29-2292 to 29-2294.
35. Criminal History Information. 29-3523.
40. Sex Offenders.
 - (a) Sex Offender Registration Act. 29-4003.
47. Jailhouse Informants. 29-4701 to 29-4706.

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.

29-110 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 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) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 (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 eighteenth 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 eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(5) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-813.01 or 28-1463.05 (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 eighteenth 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 eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(6) 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.

(7) 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.

(8) 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.

(9) No person shall be prosecuted for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386 unless the indictment for such offense is found by a grand jury within six years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within six years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(10) 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, sexual assault of a child in the first degree under section 28-319.01, labor trafficking of a minor or sex trafficking of a minor under subsection (1) of section 28-831, or an offense under section 28-1463.03; 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.

(11) 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.

(12) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) The changes made to this section by Laws 2016, LB934, shall apply to offenses committed prior to April 19, 2016, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(20) The changes made to this section by Laws 2019, LB519, shall apply to offenses committed prior to September 1, 2019, 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; Laws 2016, LB934, § 10; Laws 2019, LB519, § 13.
Effective date September 1, 2019.

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 has had a personal confrontation with an offender as a result of a homicide under sections 28-302 to 28-306, a first degree assault under section 28-308, a second degree assault under section 28-309, a third degree assault under section 28-310 when the victim is an intimate partner as defined in section 28-323, a first degree false imprisonment under section 28-314, a first degree sexual assault under section 28-319, a sexual assault of a child in the first degree under section 28-319.01, a second or third degree sexual assault under section 28-320, a sexual assault of a child in the second or third degree under section 28-320.01, domestic assault in the first, second, or third degree under section 28-323, or a robbery under section 28-324. Victim 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.

(e) Victim also includes a person who was the victim of a theft under section 28-511, 28-512, 28-513, or 28-517 when (i) the value of the thing involved is five thousand dollars or more and (ii) the victim and perpetrator were intimate partners as defined in section 28-323.

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; Laws 2018, LB160, § 1; Laws 2019, LB125, § 1.
Effective date September 1, 2019.

ARTICLE 18**MOTIONS AND ISSUES ON INDICTMENT**

Section

29-1823. Mental incompetency of defendant before trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties.

29-1823 Mental incompetency of defendant before trial; determination by judge; effect; costs; hearing; commitment proceeding; treatment; department; duties.

(1) If at any time prior to trial it appears that the defendant has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the defendant, or by any person for the defendant. The judge of the district or county court of the county where the defendant is to be tried shall have the authority to determine whether or not the defendant is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the defendant to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the defendant is mentally incompetent to stand trial and that there is a substantial probability that the defendant will become competent within the foreseeable future, the judge shall order the defendant to be committed to the Department of Health and Human Services to provide appropriate treatment to restore competency. This may include commitment to a state hospital for the mentally ill, another appropriate state-owned or state-operated facility, or a contract facility or provider pursuant to an alternative treatment plan proposed by the department and approved by the court under subsection (2) of this section until such time as the disability may be removed.

(2)(a) If the department determines that treatment by a contract facility or provider is appropriate, the department shall file a report outlining its determination and such alternative treatment plan with the court. Within twenty-one days after the filing of such report, the court shall hold a hearing to determine whether such treatment is appropriate. The court may approve or deny such alternative treatment plan.

(b) A defendant shall not be eligible for treatment by a contract facility or provider under this subsection if the judge determines that the public's safety would be at risk.

(3) Within six months after the commencement of the treatment ordered by the district or county court, and every six months thereafter until either the disability is removed or other disposition of the defendant has been made, the court shall hold a hearing to determine (a) whether the defendant is competent

to stand trial or (b) whether or not there is a substantial probability that the defendant will become competent within the foreseeable future.

(4) If it is determined that there is not a substantial probability that the defendant will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the defendant. If during the period of time between the six-month review hearings set forth in subsection (3) of this section it is the opinion of the department that the defendant is competent to stand trial, the department shall file a report outlining its opinion with the court and within twenty-one days after such report being filed the court shall hold a hearing to determine whether or not the defendant is competent to stand trial. The state shall pay the cost of maintenance and care of the defendant during the period of time ordered by the court for treatment to remove the disability.

(5) The department may establish a network of contract facilities and providers to provide competency restoration treatment pursuant to alternative treatment plans under this section. The department may create criteria for participation in such network and establish training in competency restoration treatment for participating contract facilities and providers.

Source: Laws 1967, c. 174, § 1, p. 489; Laws 1997, LB 485, § 1; Laws 2017, LB259, § 4; Laws 2019, LB686, § 5.
Operative date July 1, 2021.

Cross References

Attendance of witnesses, right of accused to compel, see Article I, section 11, Constitution of Nebraska.

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.
- 29-1914. Discovery order; limitation.
- 29-1916. Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.
- 29-1917. Deposition of witness; when; procedure; use at trial.
- 29-1918. Discovery of additional evidence; notify other party and court.
- 29-1919. Discovery; failure to comply; effect.
- 29-1923. Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.
- 29-1924. Statement, defined.

(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 includes any of the following which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

(i) Written or recorded statements;

(ii) Written summaries of oral statements; and

(iii) The substance of oral statements;

(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, in any form, 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; and

(g) Reports developed or received by law enforcement agencies when such reports directly relate to the investigation of the underlying charge or charges in the case.

(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) This section does not apply to jailhouse informants as defined in section 29-4701. Sections 29-4701 to 29-4706 govern jailhouse informants.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17; Laws 2019, LB352, § 7; Laws 2019, LB496, § 4.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB352, section 7, with LB496, section 4, to reflect all amendments.

29-1914 Discovery order; limitation.

Whenever an order is issued pursuant to the provisions of section 29-1912 or 29-1913, it shall be limited to items or information that:

(1) Directly relate to the investigation of the underlying charge or charges in the case;

(2) Are within the possession, custody, or control of the state or local subdivisions of government; and

(3) Are known to exist by the prosecution or that, by the exercise of due diligence, may become known to the prosecution.

Source: Laws 1969, c. 235, § 3, p. 869; Laws 2019, LB496, § 5.
Effective date September 1, 2019.

29-1916 Discovery order; reciprocity to prosecution; waiver of privilege of self-incrimination.

(1) Whenever the court issues an order pursuant to the provisions of sections 29-1912 and 29-1913, the court may condition its order by requiring the defendant to grant the prosecution like access to comparable items or information included within the defendant's request which:

(a) Are in the possession, custody, or control of the defendant;

(b) The defendant intends to produce at the trial; and

(c) Are material to the preparation of the prosecution's case.

(2) Whenever a defendant is granted an order under sections 29-1912 to 29-1921, the defendant shall be deemed to have waived the privilege of self-incrimination for the purposes of the operation of this section.

Source: Laws 1969, c. 235, § 5, p. 869; Laws 2019, LB496, § 6.
Effective date September 1, 2019.

29-1917 Deposition of witness; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) The proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

(4) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6; Laws 2019, LB496, § 7.

Effective date September 1, 2019.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

29-1918 Discovery of additional evidence; notify other party and court.

If, subsequent to compliance with an order for discovery under the provisions of sections 29-1912 to 29-1921, and prior to or during trial, a party discovers additional material which the party would have been under a duty to disclose or produce at the time of such previous compliance, the party shall promptly notify the other party or the other party's attorney and the court of the existence of the additional material. Such notice shall be given at the time of the discovery of such additional material.

Source: Laws 1969, c. 235, § 7, p. 870; Laws 2019, LB496, § 8.

Effective date September 1, 2019.

29-1919 Discovery; failure to comply; effect.

If, at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with sections 29-1912 to 29-1921 or an order issued pursuant to sections 29-1912 to 29-1921, the court may:

(1) Order such party to permit the discovery or inspection of materials not previously disclosed;

(2) Grant a continuance;

(3) Prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(4) Enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 235, § 8, p. 870; Laws 2019, LB496, § 9.

Effective date September 1, 2019.

29-1923 Additional statement of defendant or name of eyewitness; prosecutor; notification required; failure to comply; effect.

If, subsequent to compliance with an order issued pursuant to section 29-1922, and prior to or during trial, the prosecuting authority discovers any additional statement made by the defendant or the name of any eyewitness who has identified the defendant at a lineup or showup previously requested or ordered which is subject to discovery or inspection under section 29-1922, he

or she shall promptly notify the defendant or his or her attorney or the court of the existence of this additional material. Such notice shall be given at the time of the discovery of such additional material. If at any time during the course of the proceedings it is brought to the attention of the court that the prosecuting authority has failed to comply with this section or with an order issued pursuant to section 29-1922, the court may order the prosecuting authority to permit the discovery or inspection of materials or witnesses not previously disclosed, grant a continuance, or prohibit the prosecuting authority from introducing in evidence the material or the testimony of the witness or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

Source: Laws 1969, c. 230, § 2, p. 857; Laws 1983, LB 110, § 4; Laws 2019, LB496, § 10.
Effective date September 1, 2019.

29-1924 Statement, defined.

For purposes of sections 29-1922 and 29-1923, statement made by the defendant includes any of the following statements made by the defendant which relate to the investigation of the underlying charge or charges in the case and which were developed or received by law enforcement agencies:

- (1) Written or recorded statements;
- (2) Written summaries of oral statements; and
- (3) The substance of oral statements.

Source: Laws 1969, c. 230, § 3, p. 858; Laws 1983, LB 110, § 5; Laws 2019, LB496, § 11.
Effective date September 1, 2019.

ARTICLE 22

JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

Section

29-2202. Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

(c) PROBATION

29-2246. Terms, defined.

29-2262. Probation; conditions.

29-2268. Probation; post-release supervision; violation; court; determination.

(h) DEFERRED JUDGMENT

29-2292. Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.

29-2293. Court order; fees.

29-2294. Final order.

(a) JUDGMENT ON CONVICTION

29-2202 Verdict of guilty; judgment; when pronounced; suspension of sentence; when; bail.

Except as provided in sections 29-2292 to 29-2294, if the defendant has nothing to say, or if he or she shows no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce

judgment as provided by law. The court, in its discretion, may for any cause deemed by it good and sufficient, suspend execution of sentence for a period not to exceed ninety days from the date judgment is pronounced. If the defendant is not at liberty under bail, he or she may be admitted to bail during the period of suspension of sentence as provided in section 29-901.

Source: G.S.1873, c. 58, § 496, p. 832; R.S.1913, § 9137; C.S.1922, § 10162; C.S.1929, § 29-2202; R.S.1943, § 29-2202; Laws 1951, c. 87, § 2, p. 251; Laws 2019, LB686, § 6.
Operative date September 1, 2019.

Cross References

Bail, conditions, see sections 29-901 to 29-910.

(c) PROBATION

29-2246 Terms, defined.

For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

- (1) Association means the Nebraska District Court Judges Association;
- (2) Court means a district court, county court, or juvenile court as defined in section 43-245;
- (3) Office means the Office of Probation Administration;
- (4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision. Probation includes post-release supervision and supervision ordered by a court pursuant to a deferred judgment under section 29-2292;
- (5) Probationer means a person sentenced to probation or post-release supervision;
- (6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;
- (7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;
- (8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;
- (9) Chief probation officer means the probation officer in charge of a probation district;
- (10) System means the Nebraska Probation System;
- (11) Administrator means the probation administrator;
- (12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to,

problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

(13) Post-release supervision means the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office; and

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

Source: Laws 1971, LB 680, § 1; Laws 1972, LB 1051, § 1; Laws 1984, LB 13, § 61; Laws 1986, LB 529, § 32; Laws 2001, LB 451, § 1; Laws 2005, LB 538, § 5; Laws 2008, LB1014, § 18; Laws 2015, LB605, § 63; Laws 2016, LB919, § 3; Laws 2019, LB686, § 7. Operative date September 1, 2019.

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 the lesser of ninety days or the maximum jail term provided by law for the offense;
- (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 re-

quired 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 satisfy any other conditions reasonably related to the rehabilitation of the offender;

(r) To make restitution as described in sections 29-2280 and 29-2281; or

(s) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.

(4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:

(a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and

(b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

(5) 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.

(6) 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; Laws 2015, LB605, § 67; Laws 2016, LB1094, § 17; Laws 2019, LB340, § 1.

Effective date September 1, 2019.

Cross References

Community Corrections Act, see section 47-619.

DNA Identification Information Act, see section 29-4101.

29-2268 Probation; post-release supervision; violation; court; determination.

(1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the original period of post-release supervision. If a sentence of incarceration is imposed upon revocation of post-release supervision, the court shall grant jail credit for any days spent in custody as a result of the post-release supervision, including custodial sanctions. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the Nebraska Probation Administration Act;

(d) A custodial sanction be imposed on a probationer convicted of a felony, subject to the provisions of section 29-2266.03; and

(e) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Source: Laws 1971, LB 680, § 23; Laws 2015, LB605, § 70; Laws 2016, LB1094, § 24; Laws 2019, LB686, § 8.

Operative date September 1, 2019.

(h) DEFERRED JUDGMENT**29-2292 Deferral of entry of judgment of conviction; defendant placed on probation; conditions; factors; new sentence; when.**

(1) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request and after giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262.

(2) The court shall not defer judgment under this section if:

(a) The offense is a violation of section 42-924;

(b) The victim of the offense is an intimate partner as defined in section 28-323;

(c) The offense is a violation of section 60-6,196 or 60-6,197 or a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(d) The defendant is not eligible for probation.

(3) Whenever a court considers a request to defer judgment, the court shall consider the factors set forth in section 29-2260 and any other information the court deems relevant.

(4) Except as otherwise provided in this section and sections 29-2293 and 29-2294, the supervision of a defendant on probation pursuant to a deferred judgment shall be governed by the Nebraska Probation Administration Act and sections 29-2270 to 29-2273.

(5) After a hearing providing the prosecutor and defendant an opportunity to be heard and upon a finding that a defendant has violated a condition of his or her probation, the court may enter any order authorized by section 29-2268 or pronounce judgment and impose such new sentence as might have been originally imposed for the offense for which the defendant was convicted.

(6) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 29-2293, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment.

(7) The provisions of this section apply to offenses committed on or after July 1, 2020. For purposes of this section, an offense shall be deemed to have been committed prior to July 1, 2020, if any element of the offense occurred prior to such date.

Source: Laws 2019, LB686, § 9.
Operative date September 1, 2019.

Cross References

Nebraska Probation Administration Act, see section 29-2269.

29-2293 Court order; fees.

Upon entry of a deferred judgment pursuant to section 29-2292, the court shall order the defendant to pay all administrative and programming fees authorized under section 29-2262.06, unless waived under such section. The defendant shall pay any such fees to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Source: Laws 2019, LB686, § 10.
Operative date September 1, 2019.

29-2294 Final order.

An entry of deferred judgment pursuant to section 29-2292 is a final order as defined in section 25-1902.

Source: Laws 2019, LB686, § 11.
Operative date September 1, 2019.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section

29-3523. Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

29-3523 Criminal history record information; dissemination; limitations; removal; certain information not part of public record; court; duties; sealed record; effect; expungement.

(1) After the expiration of the periods described in subsection (3) of this section or after the granting of a motion under subsection (4), (5), or (6) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information described in subsection (7) of this section may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case shall be removed from the public record as follows:

(a) When no charges are filed as a result of the determination of the prosecuting attorney, the criminal history record information shall not be part of the public record after one year from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation;

(b) When charges are not filed as a result of a completed diversion, the criminal history record information shall not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and

(c) When charges are filed, but the case is dismissed by the court (i) on motion of the prosecuting attorney, (ii) as a result of a hearing not the subject of a pending appeal, (iii) after acquittal, (iv) after a deferred judgment, or (v) after completion of a program prescribed by a drug court or any other problem solving court approved by the Supreme Court, the criminal history record information shall not be part of the public record immediately upon notification of a criminal justice agency after acquittal pursuant to subdivision (3)(c)(iii) of this section or after the entry of an order dismissing the case.

(4) Upon the granting of a motion to set aside a conviction or an adjudication pursuant to section 29-3005, a person who is a victim of sex trafficking, as defined in section 29-3005, may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside such conviction or adjudication pursuant to section 29-3005, the sentencing court shall grant the motion and:

(a) For a conviction, issue an order as provided in subsection (7) of this section; or

(b) For an adjudication, issue an order as provided in section 43-2,108.05.

(5) Any person who has received a pardon may file a motion with the sentencing court for an order to seal the criminal history record information and any cases related to such charges or conviction. Upon a finding that the person received a pardon, the court shall grant the motion and issue an order as provided in subsection (7) of this section.

(6) Any person who is subject to a record which resulted in a case being dismissed prior to January 1, 2017, as described in subdivision (3)(c) of this section, may file a motion with the court in which the case was filed to enter an order pursuant to subsection (7) of this section. Upon a finding that the case was dismissed for any reason described in subdivision (3)(c) of this section, the court shall grant the motion and enter an order as provided in subsection (7) of this section.

(7) Upon acquittal or entry of an order dismissing a case described in subdivision (3)(c) of this section, or after granting a motion under subsection (4), (5), or (6) of this section, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are not part of the public record and shall not be disseminated to persons other than criminal justice agencies, except as provided in subsection (1) or (2) of this section;

(b) Send notice of the order (i) to the Nebraska Commission on Law Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all parties notified under subdivision (7)(b) of this section to seal all records pertaining to the case; and

(d) If the case was transferred from one court to another, send notice of the order to seal the record to the transferring court.

(8) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred.

(9) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county

attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

(10) The changes made by Laws 2018, LB1132, to the relief set forth in this section shall apply to all persons otherwise eligible in accordance with the provisions of this section, whether arrested, cited in lieu of arrest, referred for prosecution without citation, charged, convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1; Laws 2015, LB605, § 73; Laws 2016, LB505, § 1; Laws 2018, LB1132, § 3; Laws 2019, LB686, § 12.

Operative date September 1, 2019.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section

29-4003. Applicability of act.

(a) SEX OFFENDER REGISTRATION ACT

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 or senior 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 subdivision (2)(b) or (c) of section 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 subsection (1) or (4) of 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) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (6) of 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.

(c) In addition to the registrable offenses under subdivisions (1)(a) and (b) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2020:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of sexual abuse of a detainee under section 28-322.05; or

(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)(c)(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.

(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; Laws 2011, LB61, § 2; Laws 2014, LB998, § 6; Laws 2016, LB934, § 11; Laws 2019, LB519, § 14; Laws 2019, LB630, § 7.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB519, section 14, with LB630, section 7, to reflect all amendments.

ARTICLE 47
JAILHOUSE INFORMANTS

Section

- 29-4701. Terms, defined.
29-4702. Applicability.
29-4703. Prosecutor's office; duties.
29-4704. Disclosures required; deadline; redaction of information; prosecutor; duties.
29-4705. Jailhouse informant receiving leniency; notice to victim.
29-4706. Court orders authorized.

29-4701 Terms, defined.

For purposes of sections 29-4701 to 29-4706:

(1) Benefit means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of incarceration that has been requested by the jailhouse informant or that has been offered or may be offered in the future to the jailhouse informant in connection with his or her testimony in the criminal proceeding in which the prosecutor intends to call him or her as a witness; and

(2) Jailhouse informant means a person who offers testimony about statements made by a suspect or defendant while the suspect or defendant and jailhouse informant were in the custody of any jail or correctional institution and who has requested or received or may in the future receive a benefit in connection with such testimony.

Source: Laws 2019, LB352, § 1.
Effective date September 1, 2019.

29-4702 Applicability.

Sections 29-4701 to 29-4706 apply to any case in which a suspect or defendant is charged with a felony.

Source: Laws 2019, LB352, § 2.
Effective date September 1, 2019.

29-4703 Prosecutor's office; duties.

Each prosecutor's office shall undertake measures to maintain a searchable record of:

(1) Each case in which:

(a) Trial testimony is offered or provided by a jailhouse informant against a suspect's or defendant's interest; or

(b) A statement from a jailhouse informant against a suspect's or defendant's interest is used and a criminal conviction is obtained; and

(2) Any benefit requested by or offered or provided to a jailhouse informant in connection with such statement or trial testimony.

Source: Laws 2019, LB352, § 3.
Effective date September 1, 2019.

29-4704 Disclosures required; deadline; redaction of information; prosecutor; duties.

(1) Except as provided in subsection (3) of this section, if a prosecutor intends to use the testimony or statement of a jailhouse informant at a defendant's trial, the prosecutor shall disclose to the defense:

(a) The known criminal history of the jailhouse informant;

(b) Any benefit requested by or offered or provided to a jailhouse informant or that may be offered or provided to the jailhouse informant in the future in connection with such testimony;

(c) The specific statements allegedly made by the defendant against whom the jailhouse informant will testify or provide a statement and the time, place, and manner of the defendant's disclosures;

(d) The case name and jurisdiction of any criminal case known to the prosecutor in which the jailhouse informant testified or a prosecutor intended to have the jailhouse informant testify about statements made by another suspect or criminal defendant that were disclosed to the jailhouse informant and whether the jailhouse informant requested, was offered, or received any benefit in exchange for or subsequent to such testimony; and

(e) Any occasion known to the prosecutor in which the jailhouse informant recanted testimony about statements made by another suspect or defendant that were disclosed to the jailhouse informant and any transcript or copy of such recantation.

(2) The prosecutor shall disclose the information described in subsection (1) of this section to the defense as soon as practicable after discovery, but no later than thirty days before trial. If the prosecutor seeks to introduce the testimony of a jailhouse informant that was not known until after such deadline, or if the information described in subsection (1) of this section could not have been discovered or obtained by the prosecutor with the exercise of due diligence at least thirty days before the trial or other criminal proceeding, the court may permit the prosecutor to disclose the information as soon as is practicable after the thirty-day period.

(3) If the court finds by clear and convincing evidence that disclosing information listed in subsection (1) of this section will result in the possibility of bodily harm to a jailhouse informant or that a jailhouse informant will be coerced, the court may permit the prosecutor to redact some or all of such information.

(4) If, at any time subsequent to the deadline in subsection (2) of this section, the prosecutor discovers additional material required to be disclosed under subsection (1) of this section, the prosecutor shall promptly:

(a) Notify the court of the existence of the additional material; and

(b) Disclose such material to the defense, except as provided in subsection (3) of this section.

Source: Laws 2019, LB352, § 4.

Effective date September 1, 2019.

29-4705 Jailhouse informant receiving leniency; notice to victim.

If a jailhouse informant receives leniency related to a pending charge, a conviction, or a sentence for a crime against a victim as defined in section 29-119, in connection with offering or providing testimony against a suspect or defendant, the prosecutor shall notify such victim. Prior to reaching a plea

agreement, the prosecutor shall proceed as provided in subsection (1) of section 23-1201. For purposes of this section, leniency means any plea bargain, reduced or dismissed charges, bail consideration, or reduction or modification of sentence.

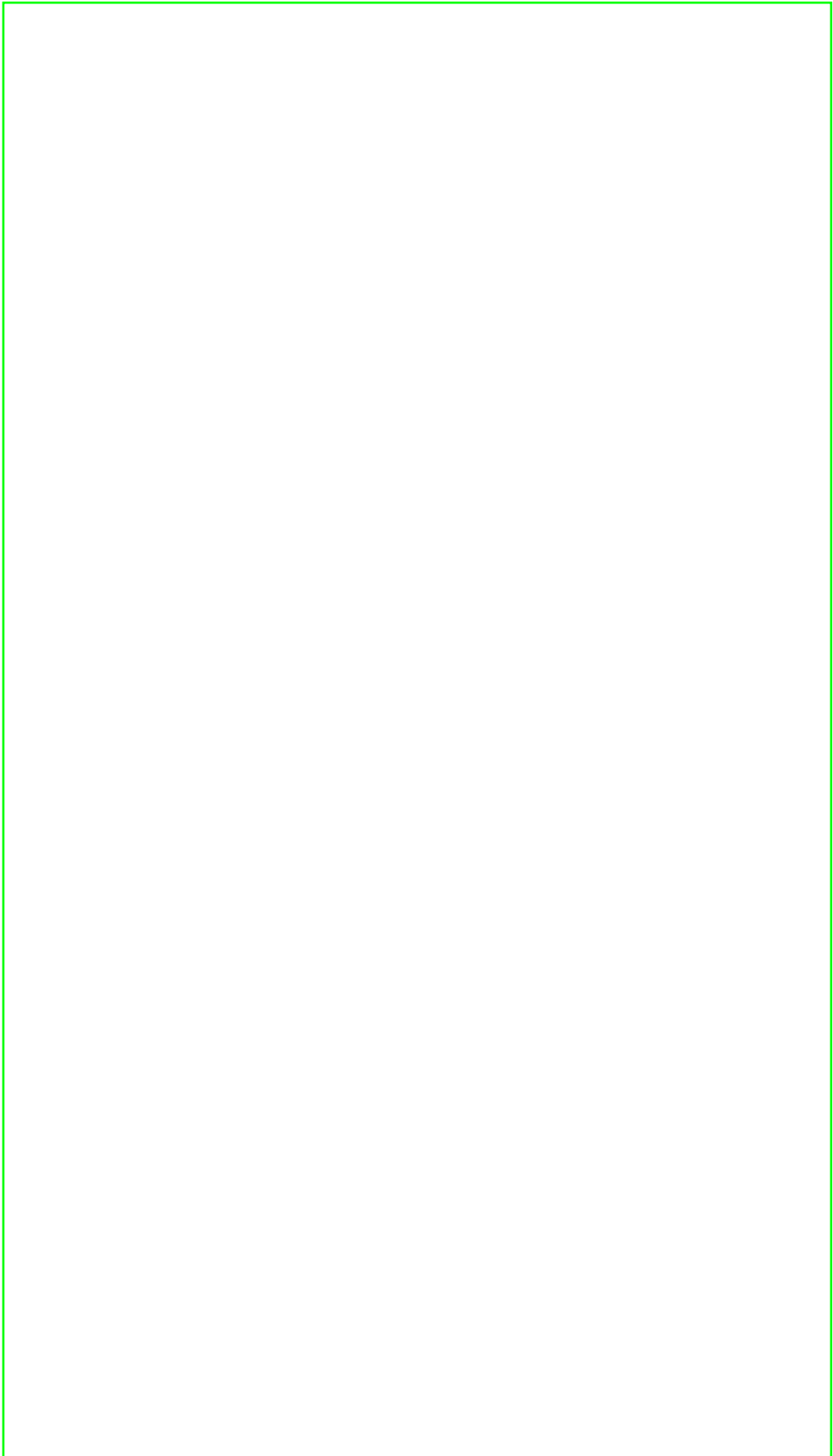
Source: Laws 2019, LB352, § 5.
Effective date September 1, 2019.

29-4706 Court orders authorized.

If, at any time during the course of the proceedings, it is brought to the attention of the court that the prosecutor has failed to comply with section 29-4704, or an order issued pursuant to this section, the court may:

- (1) Order the prosecutor to disclose materials not previously disclosed;
- (2) Grant a continuance;
- (3) Prohibit the prosecutor from calling a witness not disclosed or introducing in evidence the material not disclosed; or
- (4) Enter such other order as it deems just under the circumstances.

Source: Laws 2019, LB352, § 6.
Effective date September 1, 2019.



CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

Article.

- 9. Banking Transactions Involving Trust or Estate Assets. 30-901.
- 24. Probate of Wills and Administration.
 - Part 7—Duties and Powers of Personal Representatives. 30-2478.
 - Part 8—Creditors' Claims. 30-2483.
- 27. Nonprobate Transfers.
 - Part 2—Multiple-Person Accounts.
 - Subpart B—Ownership as Between Parties and Others. 30-2723.
- 38. Nebraska Uniform Trust Code.
 - Part 1—General Provisions and Definitions. 30-3805, 30-3808.
 - Part 6—Revocable Trusts. 30-3855.
 - Part 7—Office of Trustee. 30-3859.
 - Part 8—Duties and Powers of Trustee. 30-3873 to 30-3882.
- 40. Nebraska Uniform Power of Attorney Act.
 - Part 1—General Provisions. 30-4020.
 - Part 2—Authority. 30-4031.
- 43. Nebraska Uniform Directed Trust Act. 30-4301 to 30-4319.

ARTICLE 9

BANKING TRANSACTIONS INVOLVING TRUST OR ESTATE ASSETS

Section

- 30-901. Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

30-901 Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

On and after January 1, 2020, in any case in which copersonal representatives, cotrustees, coguardians, or coconservators have been appointed, unless specifically restricted in a will, a trust, or an order of appointment, such copersonal representatives, cotrustees, coguardians, or coconservators shall have the authority to act independently with respect to, and shall not be required to act in concert with respect to, banking transactions involving trust or estate assets.

Source: Laws 2019, LB55, § 2.

Effective date September 1, 2019.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

Section

- 30-2478. Corepresentatives; when joint action required.

PART 8

CREDITORS' CLAIMS

- 30-2483. Notice to creditors.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2478 Corepresentatives; when joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, when a corepresentative has been delegated to act for the others, or as provided in section 30-901. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or her or if advised by the personal representative with whom they deal that he or she has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Source: Laws 1974, LB 354, § 156, UPC § 3-717; Laws 2019, LB55, § 1.
Effective date September 1, 2019.

PART 8

CREDITORS' CLAIMS

30-2483 Notice to creditors.

(a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its web site. Any notice that fails to conform with such manner is void.

Source: Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3; Laws 2019, LB593, § 1.
Effective date May 31, 2019.

ARTICLE 27

NONPROBATE TRANSFERS

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

Section

30-2723. Rights at death.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723 Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2)(A) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(B) Except as otherwise specified in the POD designation, if there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subdivision (2)(A) of this subsection.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes

of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Source: Laws 1993, LB 250, § 9; Laws 2019, LB55, § 3.
Effective date September 1, 2019.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 1

GENERAL PROVISIONS AND DEFINITIONS

Section

- 30-3805. (UTC 105) Default and mandatory rules.
30-3808. (UTC 108) Principal place of administration.

PART 6

REVOCABLE TRUSTS

- 30-3855. (UTC 603) Rights and duties.

PART 7

OFFICE OF TRUSTEE

- 30-3859. (UTC 703) Cotrustees.

PART 8

DUTIES AND POWERS OF TRUSTEE

- 30-3873. Repealed. Laws 2019, LB536, § 25.
30-3880. (UTC 815) General powers of trustee.
30-3881. (UTC 816) Specific powers of trustee.
30-3882. (UTC 817) Distribution upon termination.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

30-3805 (UTC 105) Default and mandatory rules.

(UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

- (1) the requirements for creating a trust;
- (2) subject to sections 30-4309, 30-4311, and 30-4312, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22; Laws 2019, LB536, § 20.
Effective date September 1, 2019.

30-3808 (UTC 108) Principal place of administration.

(UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) all or part of the administration occurs in the designated jurisdiction; or

(3) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 30-3860.

Source: Laws 2003, LB 130, § 8; Laws 2019, LB536, § 21.
Effective date September 1, 2019.

PART 6

REVOCABLE TRUSTS

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(b) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(c) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(d) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2; Laws 2019, LB536, § 22.
Effective date September 1, 2019.

PART 7

OFFICE OF TRUSTEE

30-3859 (UTC 703) Cotrustees.

(UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision, except that any cotrustee may act independently as provided in section 30-901.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) Subject to section 30-4312, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to section 30-4312, each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a serious breach of trust; and
- (2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Source: Laws 2003, LB 130, § 59; Laws 2019, LB55, § 4; Laws 2019, LB536, § 23.

Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB55, section 4, with LB536, section 23, to reflect all amendments.

PART 8

DUTIES AND POWERS OF TRUSTEE

30-3873 Repealed. Laws 2019, LB536, § 25.**30-3880 (UTC 815) General powers of trustee.**

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

- (1) powers conferred by the terms of the trust; and
- (2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4; Laws 2019, LB593, § 2.
Effective date May 31, 2019.

30-3881 (UTC 816) Specific powers of trustee.

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or

without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5; Laws 2019, LB593, § 3.
Effective date May 31, 2019.

Cross References

Nebraska Uniform Custodial Trust Act, see section 30-3501.

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-3882 (UTC 817) Distribution upon termination.

(UTC 817) (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to

the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6; Laws 2019, LB593, § 4.
Effective date May 31, 2019.

ARTICLE 40

NEBRASKA UNIFORM POWER OF ATTORNEY ACT

PART 1 GENERAL PROVISIONS

Section

30-4020. Liability for refusal to accept acknowledged power of attorney.

PART 2 AUTHORITY

30-4031. Banks and other financial institutions.

PART 1 GENERAL PROVISIONS

30-4020 Liability for refusal to accept acknowledged power of attorney.

(1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented, except as provided in section 30-4031.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(g) The person brought, or has actual knowledge that another person has brought, a judicial proceeding for construction of a power of attorney or review of the agent's conduct; or

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(3) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

(a) The person's reason for refusal is based exclusively upon the date the power of attorney was executed; or

(b) The person's refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(4)(a) A person may bring an action or proceeding to mandate the acceptance of an acknowledged power of attorney.

(b) In any action or proceeding to mandate the acceptance of an acknowledged power of attorney or confirm the validity of an acknowledged power of attorney, a person found liable for refusing to accept such power of attorney is subject to:

(i) Liability to the principal and to the principal's heirs, assigns, and personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf;

(ii) A court order mandating acceptance of the power of attorney; and

(iii) Liability for reasonable attorney's fees and costs incurred in such action or proceeding.

(c) In any action or proceeding in which a person's refusal to accept an acknowledged power of attorney in violation of this section prevents an agent from completing a transaction requested by the agent with respect to a security account as defined in section 30-2734, owned by the principal, such person, in addition to being subject to the provisions of subdivision (4)(b) of this section, is subject to:

(i) Economic damages of the principal proximately caused by the person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of the agent designated in such power of attorney with respect to such security account; and

(ii) Reasonable attorney's fees and costs incurred to seek damages resulting from such person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of such agent designated in the power of attorney with respect to the security account.

Source: Laws 2012, LB1113, § 20; Laws 2019, LB145, § 1; Laws 2019, LB146, § 1.

Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB145, section 1, with LB146, section 1, to reflect all amendments.

PART 2

AUTHORITY

30-4031 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution; and

(12) Execute such powers of attorney as may be required and necessary for interacting with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution so long as the terms and conditions in the financial institution's power of attorney are similar to those in the power of attorney granting authority, including the identification of the acting agent and the agent's successors. The execution of a financial institution's power of attorney document does not revoke the power of attorney document granting authority.

Source: Laws 2012, LB1113, § 31; Laws 2019, LB145, § 2.
Effective date September 1, 2019.

ARTICLE 43

NEBRASKA UNIFORM DIRECTED TRUST ACT

Section

30-4301.	(UDTA 1)	Act, how cited.
30-4302.	(UDTA 2)	Definitions.
30-4303.	(UDTA 3)	Application; principal place of administration.
30-4304.	(UDTA 4)	Common law and principles of equity.
30-4305.	(UDTA 5)	Exclusions.
30-4306.	(UDTA 6)	Powers of trust director.
30-4307.	(UDTA 7)	Limitation on trust director.
30-4308.	(UDTA 8)	Duty and liability of trust director.
30-4309.	(UDTA 9)	Duty and liability of directed trustee.
30-4310.	(UDTA 10)	Duty to provide information to trust director or trustee.
30-4311.	(UDTA 11)	No duty to monitor, inform, or advise.
30-4312.	(UDTA 12)	Application to cotrustee.
30-4313.	(UDTA 13)	Limitation of action against trust director.
30-4314.	(UDTA 14)	Defenses in action against trust director.
30-4315.	(UDTA 15)	Jurisdiction over trust director.
30-4316.	(UDTA 16)	Office of trust director.
30-4317.	(UDTA 17)	Uniformity of application and construction.
30-4318.	(UDTA 18)	Electronic records and signatures.
30-4319.		Date; applicability.

30-4301 (UDTA 1) Act, how cited.

(UDTA 1) Sections 30-4301 to 30-4319 shall be known and may be cited as the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 1.
Effective date September 1, 2019.

30-4302 (UDTA 2) Definitions.

(UDTA 2) In the Nebraska Uniform Directed Trust Act:

(1) Breach of trust includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, the Nebraska Uniform Directed Trust Act, or law of this state other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

(2) Directed trust means a trust for which the terms of the trust grant a power of direction.

(3) Directed trustee means a trustee that is subject to a trust director's power of direction.

(4) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) Power of direction means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration, including, but not limited to, amendment, reform, or termination of the trust. The term excludes the powers described in subsection (b) of section 30-4305.

(6) Settlor has the same meaning as in section 30-3803.

(7) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) Terms of a trust means:

(A) except as otherwise provided in subdivision (8)(B) of this section, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(9) Trust director means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) Trustee has the same meaning as in section 30-3803.

Source: Laws 2019, LB536, § 2.

Effective date September 1, 2019.

30-4303 (UDTA 3) Application; principal place of administration.

(UDTA 3) The Nebraska Uniform Directed Trust Act applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after September 7, 2019.

(2) If the principal place of administration of the trust is changed to this state on or after September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after the date of the change.

Source: Laws 2019, LB536, § 3.

Effective date September 1, 2019.

30-4304 (UDTA 4) Common law and principles of equity.

(UDTA 4) The common law and principles of equity supplement the Nebraska Uniform Directed Trust Act, except to the extent modified by the Nebraska

Uniform Directed Trust Act or law of this state other than the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 4.

Effective date September 1, 2019.

30-4305 (UDTA 5) Exclusions.

(UDTA 5) (a) In this section, power of appointment means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) The Nebraska Uniform Directed Trust Act does not apply to a:

(1) power of appointment;

(2) power to appoint or remove a trustee or trust director;

(3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(A) the beneficiary; or

(B) the beneficial interest of another beneficiary represented by the beneficiary under sections 30-3822 to 30-3826 with respect to the exercise or nonexercise of the power; or

(5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code of 1986 as defined in section 49-801.01.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Source: Laws 2019, LB536, § 5.

Effective date September 1, 2019.

30-4306 (UDTA 6) Powers of trust director.

(UDTA 6) (a) Subject to section 30-4307, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (a) of this section; and

(2) trust directors with joint powers must act by majority decision.

(c) A power of direction includes only those powers granted by the terms of the trust and further powers pursuant to subdivision (b)(1) of this section must

be appropriate to the exercise or nonexercise of such power of direction granted by the terms of the trust.

Source: Laws 2019, LB536, § 6.
Effective date September 1, 2019.

30-4307 (UDTA 7) Limitation on trust director.

(UDTA 7) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 regarding:

- (1) a payback provision in the terms of a trust necessary to comply with the medicaid reimbursement requirements of section 68-919; and
- (2) a charitable interest in the trust, including notice regarding the interest to the Attorney General.

Source: Laws 2019, LB536, § 7.
Effective date September 1, 2019.

30-4308 (UDTA 8) Duty and liability of trust director.

(UDTA 8) (a) Subject to subsection (b) of this section, with respect to a power of direction or further power under subdivision (b)(1) of section 30-4306:

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the Nebraska Uniform Directed Trust Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under the Nebraska Uniform Directed Trust Act.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 8.
Effective date September 1, 2019.

30-4309 (UDTA 9) Duty and liability of directed trustee.

(UDTA 9) (a) Subject to subsections (b) and (c) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of

section 30-4306 to the extent that by complying the trustee would engage in willful misconduct.

(c) A directed trustee must determine that the trust director's exercise of power of direction under subsection (a) of section 30-4306 or appropriation of further power under subsection (b) of section 30-4306 is granted by the terms of the trust pursuant to subsection (c) of section 30-4306.

(d) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

- (1) the breach involved the trustee's or other director's willful misconduct;
- (2) the release was induced by improper conduct of the trustee or other director in procuring the release; or
- (3) at the time of the release, the director did not know the material facts relating to the breach.

(e) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(f) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 9.
Effective date September 1, 2019.

30-4310 (UDTA 10) Duty to provide information to trust director or trustee.

(UDTA 10) (a) Subject to section 30-4311, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the trustee; and
- (2) the powers or duties of the director.

(b) Subject to section 30-4311, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

- (1) the powers or duties of the director; and
- (2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

Source: Laws 2019, LB536, § 10.
Effective date September 1, 2019.

30-4311 (UDTA 11) No duty to monitor, inform, or advise.

(UDTA 11) (a) Unless the terms of a trust provide otherwise:

- (1) a trustee does not have a duty to:
 - (A) monitor a trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in subdivision (a)(1) of this section, a trustee does not assume the duty excluded by such subdivision.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

(A) monitor a trustee or another trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in subdivision (b)(1) of this section, a trust director does not assume the duty excluded by such subdivision.

Source: Laws 2019, LB536, § 11.

Effective date September 1, 2019.

30-4312 (UDTA 12) Application to cotrustee.

(UDTA 12) The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 30-4309 to 30-4311.

Source: Laws 2019, LB536, § 12.

Effective date September 1, 2019.

30-4313 (UDTA 13) Limitation of action against trust director.

(UDTA 13) (a) An action against a trust director for breach of trust must be commenced within the same limitation period as under section 30-3894 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under section 30-3894 in an action for breach of trust against a trustee in a like position and under similar circumstances.

Source: Laws 2019, LB536, § 13.

Effective date September 1, 2019.

30-4314 (UDTA 14) Defenses in action against trust director.

(UDTA 14) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Source: Laws 2019, LB536, § 14.

Effective date September 1, 2019.

30-4315 (UDTA 15) Jurisdiction over trust director.

(UDTA 15) (a) By accepting appointment as a trust director of a trust subject to the Nebraska Uniform Directed Trust Act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Source: Laws 2019, LB536, § 15.
Effective date September 1, 2019.

30-4316 (UDTA 16) Office of trust director.

(UDTA 16) Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

- (1) acceptance under section 30-3857;
- (2) giving of bond to secure performance under section 30-3858;
- (3) reasonable compensation under section 30-3864;
- (4) resignation under section 30-3861;
- (5) removal under section 30-3862; and
- (6) vacancy and appointment of successor under section 30-3860.

Source: Laws 2019, LB536, § 16.
Effective date September 1, 2019.

30-4317 (UDTA 17) Uniformity of application and construction.

(UDTA 17) In applying and construing the Nebraska Uniform Directed Trust 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 2019, LB536, § 17.
Effective date September 1, 2019.

30-4318 (UDTA 18) Electronic records and signatures.

(UDTA 18) The provisions of the Nebraska Uniform Directed Trust Act governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, as such section existed on January 1 immediately preceding January 1, 2005, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2019, LB536, § 18.
Effective date September 1, 2019.

30-4319 Date; applicability.

(a) Except as otherwise provided in the Nebraska Uniform Directed Trust Act, on January 1, 2021:

- (1) the Nebraska Uniform Directed Trust Act applies to all trusts created before, on, or after January 1, 2021;

(2) the Nebraska Uniform Directed Trust Act applies to all judicial proceedings concerning trust directors, trustees, and cotrustees commenced on or after January 1, 2021;

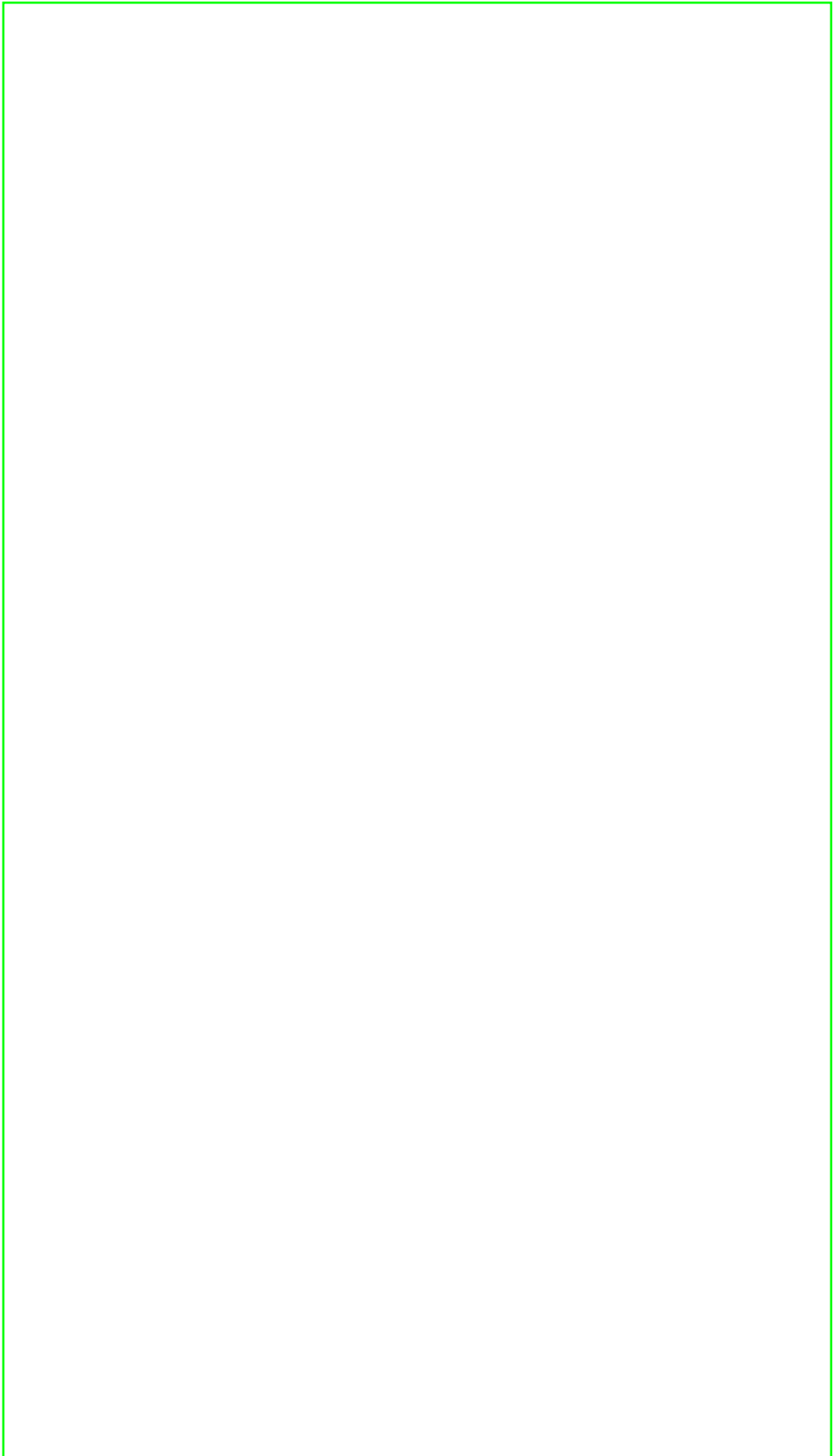
(3) the Nebraska Uniform Directed Trust Act applies to judicial proceedings concerning trusts commenced before January 1, 2021, unless the court finds that application of a particular provision of the Nebraska Uniform Directed Trust Act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Nebraska Uniform Directed Trust Act does not apply and the superseded law applies; and

(4) an act done before January 1, 2021, is not affected by the Nebraska Uniform Directed Trust Act.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2021, that statute continues to apply to the right even if it has been repealed or superseded.

Source: Laws 2019, LB536, § 19.

Effective date September 1, 2019.



CHAPTER 31

DRAINAGE

Article.

5. Sanitary Drainage Districts in Municipalities. 31-505.
7. Sanitary and Improvement Districts.
 - (f) Recall of Trustees. 31-787, 31-793.
10. Flood Plain Management. 31-1017.

ARTICLE 5

SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section

31-505. Sanitary district trustees; election; organization; officers; corporate powers.

31-505 Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be three trustees, and where such sanitary district contains a city of more than forty thousand inhabitants as so determined, there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his or her election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of, with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214; Laws 2019, LB67, § 7.

Effective date September 1, 2019.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(f) RECALL OF TRUSTEES

Section

31-787. Trustee; removal by recall; petition; procedure.

31-793. Recall petition filing form; filing limitation.

(f) RECALL OF TRUSTEES

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section 31-735. A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section 31-735. Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section 31-735. If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section 31-735.

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name of the trustee sought to be removed and

whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2; Laws 2012, LB1121, § 1; Laws 2019, LB411, § 27.
Operative date September 1, 2019.

31-793 Recall petition filing form; filing limitation.

No recall petition filing form shall be filed against a trustee under section 31-787 within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8; Laws 2019, LB411, § 28.
Operative date September 1, 2019.

ARTICLE 10

FLOOD PLAIN MANAGEMENT

Section

31-1017. Department; flood plain management; powers and duties.

31-1017 Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

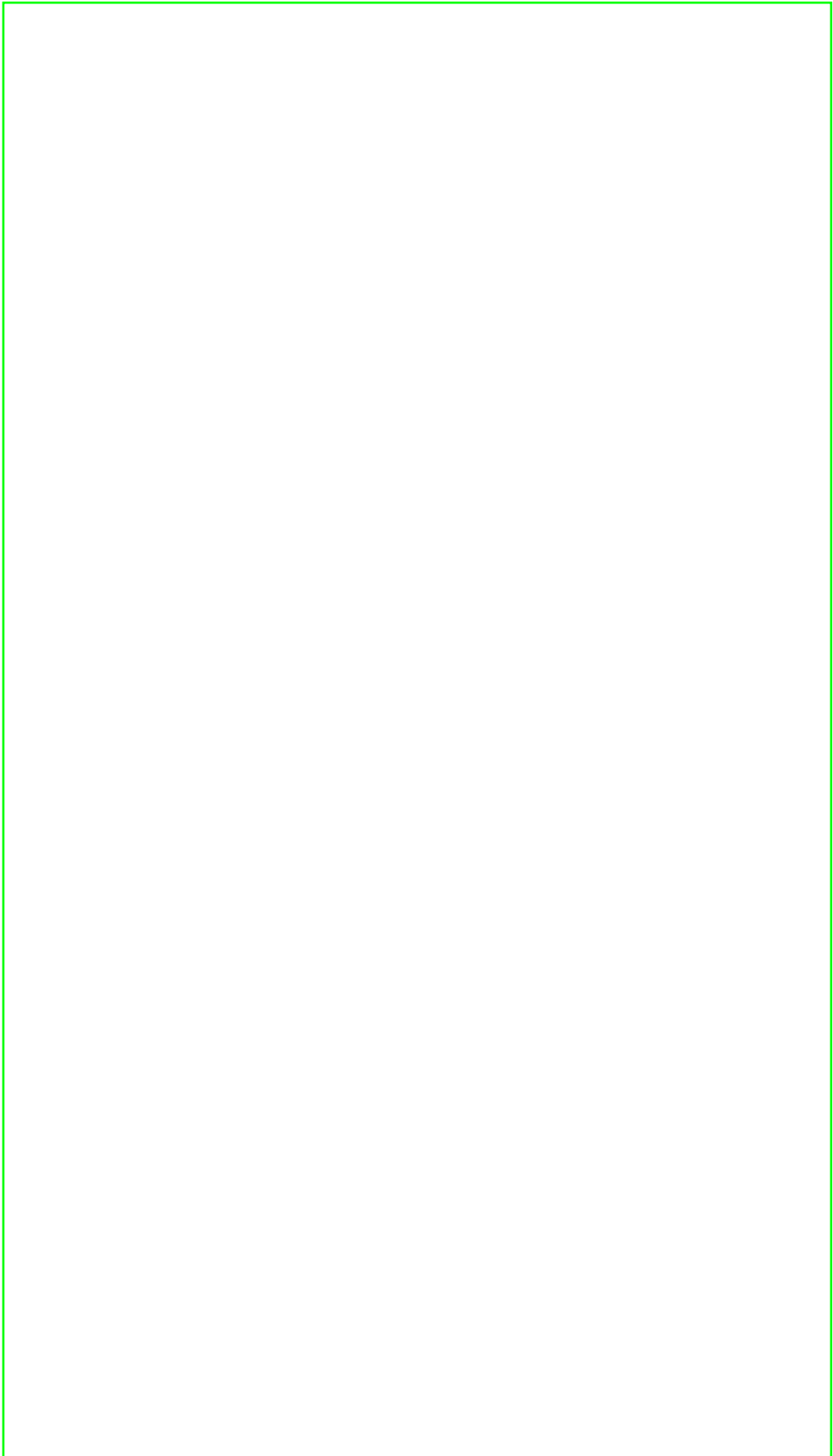
(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78; Laws 2019, LB319, § 1.
Effective date September 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.



CHAPTER 32

ELECTIONS

Article.

1. General Provisions and Definitions. 32-101, 32-116.
2. Election Officials.
 - (a) Secretary of State. 32-202.
 - (c) Counties with Election Commissioners. 32-221, 32-223.
 - (d) Counties without Election Commissioners. 32-230 to 32-236.
3. Registration of Voters. 32-330.
5. Officers and Issues.
 - (a) Offices and Officeholders. 32-538 to 32-551.
 - (b) Local Elections. 32-552.
 - (c) Vacancies. 32-567.
6. Filing and Nomination Procedures. 32-604 to 32-631.
8. Notice, Publication, and Printing of Ballots. 32-803, 32-816.
9. Voting and Election Procedures. 32-901 to 32-956.
10. Counting and Canvassing Ballots. 32-1002 to 32-1041.
11. Contest of Elections and Recounts. 32-1121.
12. Election Costs. 32-1203.
13. Recall. 32-1303 to 32-1309.
14. Initiatives, Referendums, and Advisory Votes. 32-1405 to 32-1409.
15. Violations and Penalties. 32-1524.

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section

- 32-101. Act, how cited.
 32-116. Residence, defined.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3; Laws 2015, LB575, § 5; Laws 2018, LB1065, § 1; Laws 2019, LB492, § 35.

Effective date September 1, 2019.

32-116 Residence, defined.

Residence shall mean (1) that place in Nebraska in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent

and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place in Nebraska where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in Nebraska in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.

Source: Laws 1994, LB 76, § 16; Laws 2019, LB411, § 29.
Operative date September 1, 2019.

ARTICLE 2 ELECTION OFFICIALS

(a) SECRETARY OF STATE

Section

32-202. Secretary of State; duties.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221. Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

32-223. Receiving board; members; requirements; inspectors; clerk of election; appointment.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230. Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

32-231. Judge and clerk of election; qualifications; term; district inspectors; duties.

32-236. Judge and clerk of election; district inspector; service required; violation; penalty.

(a) SECRETARY OF STATE

32-202 Secretary of State; duties.

In addition to any other duties prescribed by law, the Secretary of State shall:

- (1) Supervise the conduct of primary and general elections in this state;
- (2) Provide training for election commissioners, county clerks, and other election officials in providing for registration of voters and the conduct of elections;
- (3) Enforce the Election Act;
- (4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;
- (5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;
- (6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;
- (7) Contract with the Department of Administrative Services for storage and distribution of the forms;
- (8) Require reporting to ensure compliance with sections 32-308 to 32-310;
- (9) Prepare and transmit reports as required by the National Voter Registration Act of 1993, 52 U.S.C. 20501 et seq.;
- (10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request;

(11) Develop and print pamphlets described in section 32-1405.01;

(12) Adopt and promulgate rules and regulations as necessary for elections conducted under sections 32-952 to 32-959; and

(13) Establish a free access system, such as a toll-free telephone number or an Internet web site, that any voter who casts a provisional ballot may access to discover whether the vote of that voter was counted and, if the vote was not counted, the reason that the vote was not counted. The Secretary of State shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

Source: Laws 1994, LB 76, § 22; Laws 1995, LB 337, § 2; Laws 1996, LB 964, § 2; Laws 2003, LB 358, § 5; Laws 2008, LB838, § 1; Laws 2019, LB411, § 30.

Operative date September 1, 2019.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221 Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

(1) The election commissioner shall appoint precinct and district inspectors, judges of election, and clerks of election to assist the election commissioner in conducting elections on election day. In counties with a population of less than four hundred thousand inhabitants as determined by the most recent federal decennial census, judges and clerks of election and inspectors shall be appointed at least thirty days prior to the statewide primary election, shall hold office for terms of two years or until their successors are appointed and qualified for the next statewide primary election, and shall serve at all elections in the county during their terms of office. In counties with a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, judges and clerks of election shall be appointed at least thirty days prior to the first election for which appointments are necessary and shall serve for at least four elections.

(2) Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the election commissioner. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) All persons appointed shall be of good repute and character, be able to read and write the English language, and except as otherwise provided in subsection (4) of section 32-223, be registered voters in the county. No candidate at an election shall be appointed as a judge or clerk of election or inspector for such election other than a candidate for delegate to a county, state, or national political party convention.

(4) If a vacancy occurs in the office of judge or clerk of election or inspector, the election commissioner shall fill such vacancy in accordance with section 32-223. If any judge or clerk of election or inspector fails to appear at the hour

appointed for the opening of the polls, the remaining officers shall notify the election commissioner, select a registered voter to serve in place of the absent officer if so directed by the election commissioner, and proceed to conduct the election. If the election commissioner finds that a judge or clerk of election or inspector does not possess all the qualifications prescribed in this section or if any judge or clerk of election or inspector is guilty of neglecting the duties of the office or of any official misconduct, the election commissioner shall remove the person and fill the vacancy.

Source: Laws 1994, LB 76, § 41; Laws 1997, LB 764, § 19; Laws 2003, LB 357, § 1; Laws 2016, LB742, § 16; Laws 2019, LB411, § 31. Operative date September 1, 2019.

32-223 Receiving board; members; requirements; inspectors; clerk of election; appointment.

(1) Except as otherwise provided in the Election Act, the election commissioner shall appoint a precinct inspector and a receiving board to consist of at least two judges and two clerks of election for each precinct. The election commissioner may appoint district inspectors to aid the election commissioner in the performance of his or her duties and supervise a group of precincts on election day.

(2) The election commissioner may allow persons serving on a receiving board as judges and clerks of election and precinct inspectors to serve for part of the time the polls are open and appoint other judges and clerks of election and precinct inspectors to serve on the same receiving board for the remainder of the time the polls are open.

(3) On each receiving board at any one time, one judge and one clerk of election shall be registered voters of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge and one clerk of election shall be registered voters of the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, except that one judge or clerk of election may be a registered voter who is not affiliated with either of such parties. If a third judge is appointed, such judge shall be a registered voter of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. All precinct and district inspectors shall be divided between all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for Governor or for President of the United States by the parties, respectively.

(4) The election commissioner may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (3) of section 32-221, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered

a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 43; Laws 2002, LB 1054, § 8; Laws 2003, LB 357, § 2; Laws 2003, LB 358, § 7; Laws 2019, LB411, § 32. Operative date September 1, 2019.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230 Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy.

(1) As provided in subsection (4) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board consisting of three judges of election and two clerks of election. The chairperson of the county central committee of each political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(4) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(5) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(6) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election

shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1; Laws 2019, LB411, § 33.
Operative date September 1, 2019.

32-231 Judge and clerk of election; qualifications; term; district inspectors; duties.

(1) Each judge and clerk of election appointed pursuant to section 32-230 shall (a) be of good repute and character and able to read and write the English language, (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, (c) be a registered voter except as otherwise provided in subsection (6) of section 32-230, and (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election.

Source: Laws 1994, LB 76, § 51; Laws 1999, LB 802, § 2; Laws 2002, LB 1054, § 12; Laws 2003, LB 357, § 4; Laws 2019, LB411, § 34.
Operative date September 1, 2019.

32-236 Judge and clerk of election; district inspector; service required; violation; penalty.

Each judge and clerk of election appointed pursuant to subsection (4) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 56; Laws 1997, LB 764, § 24; Laws 1999, LB 802, § 6; Laws 2002, LB 1054, § 15; Laws 2019, LB411, § 35.
Operative date September 1, 2019.

ARTICLE 3
REGISTRATION OF VOTERS

Section

32-330. Voter registration register; public record; exception; examination; lists of registered voters; availability.

32-330 Voter registration register; public record; exception; examination; lists of registered voters; availability.

(1) Except as otherwise provided in subsection (3) of section 32-301, the voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk, but no person other than the Secretary of State, the election commissioner, the county clerk, or law enforcement shall be allowed to make copies of the register. Copies of the register shall only be used for list maintenance as provided in section 32-329 or law enforcement purposes. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The Secretary of State, election commissioner, or county clerk shall withhold information in the register designated as confidential under section 32-331. No portion of the register made available to the public and no list distributed pursuant to this section shall include the digital signature of any voter.

(2) The Secretary of State, election commissioner, or county clerk shall make available a list of registered voters that contains no more than the information authorized in subsection (3) of this section and, if requested, a list that only contains such information for registered voters who have voted in an election held more than thirty days prior to the request for the list. The Secretary of State, election commissioner, or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be used for commercial purposes.

(3)(a) The Secretary of State, election commissioner, or county clerk shall withhold from any list of registered voters distributed pursuant to subsection (2) of this section any information in the voter registration records which is designated as confidential under section 32-331 or marked private on the voter registration application or voter registration record.

(b) Except as otherwise provided in subdivision (a) of this subsection, a list of registered voters distributed pursuant to subsection (2) of this section shall contain no more than the following information:

- (i) The registrant's name;
- (ii) The registrant's residential address;
- (iii) The registrant's mailing address;
- (iv) The registrant's telephone number;
- (v) The registrant's voter registration status;
- (vi) The registrant's voter identification number;
- (vii) The registrant's date of birth;
- (viii) The registrant's date of voter registration;
- (ix) The registrant's voting precinct;

- (x) The registrant’s polling site;
- (xi) The registrant’s political party affiliation;
- (xii) The political subdivisions in which the registrant resides; and
- (xiii) The registrant’s voter history.

(4) Any person who acquires a list of registered voters under subsection (2) of this section shall provide his or her name, address, telephone number, email address, and campaign committee name or organization name, if applicable, and the state of organization, if applicable, and shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of County, Nebraska, (or the State of Nebraska) only for the purposes prescribed in section 32-330 and for no other purpose and that I will not permit the use or copying of such list for unauthorized purposes.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

.....

(Signature of person acquiring list)

Subscribed and sworn to before me this day of 20...

.....

(Signature of officer)

.....

(Name and official title of officer)

(5) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(6) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters containing only the information authorized under subsection (3) of this section to the state party headquarters of each political party and to the county chairperson of each political party.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8; Laws 2015, LB575, § 10; Laws 2018, LB1065, § 5; Laws 2019, LB411, § 36.
Operative date September 1, 2019.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section

32-538. City with city manager plan of government; city council; members; wards; terms; change in number; procedure.

32-539. City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

32-551. Regional metropolitan transit authority; terms.

Section

(b) LOCAL ELECTIONS

32-552. Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(c) VACANCIES

32-567. Vacancies; offices listed; how filled.

(a) OFFICES AND OFFICEHOLDERS

32-538 City with city manager plan of government; city council; members; wards; terms; change in number; procedure.

(1) In a city which adopts the city manager plan of government pursuant to the City Manager Plan of Government Act, the number of city council members shall be determined by the class and population of the city. In cities having one thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, and in cities having more than forty thousand but less than two hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be seven members, except that in cities having between twenty-five thousand and forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, the city council may by ordinance provide for seven members. Council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of its council members by wards, the number and boundaries of which are provided for in section 16-104. Council members shall serve for terms of four years or until their successors are elected and qualified. The council members shall meet the qualifications found in sections 19-613 and 19-613.01.

The first election under an ordinance changing the number of council members or their manner of election shall take place at the next regular city election. Council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of council members or their manner of election, one-half or the bare majority of council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed, for two years, as provided in the ordinance. If only one council member is to be elected at large at such first election, such member shall serve for four years.

(2) Commencing with the statewide primary election in 1976, and every two years thereafter, those candidates whose terms will be expiring shall be nominated at the statewide primary election and elected at the statewide general election.

Source: Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37; Laws 2019, LB193, § 240.
Effective date September 1, 2019.

Cross References

City Manager Plan of Government Act, see section 19-601.

32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

(1) In a city which adopts the commission plan of government pursuant to the Municipal Commission Plan of Government Act, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be elected from the city at large. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) If a city elects to adopt the commission plan of government, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

Source: Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3; Laws 2017, LB113, § 38; Laws 2019, LB193, § 241.
Effective date September 1, 2019.

Cross References

Municipal Commission Plan of Government Act, see section 19-401.

32-551 Regional metropolitan transit authority; terms.

(1) Members of the board of directors of a regional metropolitan transit authority shall be nominated at the statewide primary election and elected at the statewide general election following the effective date of the conversion of such transit authority established under the Transit Authority Law into a regional metropolitan transit authority as provided in section 18-808, and subsequently elected members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Candidates for election shall be nominated upon a nonpartisan ballot.

(2) Members elected to represent odd-numbered districts in the first election of board members shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election of board members 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.

(3) Members shall take office on the first Thursday after the first Tuesday in January following their election, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office.

Source: Laws 2019, LB492, § 36.

Effective date September 1, 2019.

Cross References

Transit Authority Law, see section 14-1826.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; districts.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the requesting political subdivision's governing board and subjected to all public review and challenge ordinances of the political subdivision.

(2) After the next federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district:

(a)(i) The Legislature hereby divides such school district into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. The Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census. The numbers and boundaries of the election districts are designated and established by a map identified and labeled as OPS-13-002, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2013, LB125. Such districts are drawn using the boundaries of the Class V school district as they existed on February 12, 2013; (ii) the Clerk of the Legislature shall transfer possession of the map referred to in subdivision (a)(i) of this subsection to the Secretary of State and the election commissioner of the county in which the greater part of the school district is situated on February 12, 2013; (iii) when questions of interpretation of such election district boundaries arise, the map referred to in subdivision (a)(i) of this subsection in possession of such election commissioner shall serve as the indication of the legislative intent in drawing the election

district boundaries; (iv) the Secretary of State and such election commissioner shall also have available for viewing on his or her web site the map referred to in subdivision (a)(i) of this subsection identifying the boundaries for such election districts; and (v) the twelve numbered districts in existence on January 1, 2013, shall remain unchanged until the terms of members elected at the election in May 2013 begin; and

(b) After the next federal decennial census after February 12, 2013, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district and also following each federal decennial census.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2; Laws 2019, LB411, § 37.
Operative date September 1, 2019.

(c) VACANCIES

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;

(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(6) In offices in public power and irrigation districts, according to section 70-615;

(7) In offices in natural resources districts, according to section 2-3215;

(8) In offices in community college areas, according to section 85-1514;

(9) In offices in educational service units, according to section 79-1217;

(10) In offices in hospital districts, according to section 23-3534;

(11) In offices in metropolitan utilities districts, according to section 14-2104;

(12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(13) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(14) In membership on the council of a municipal county, by the council;

(15) For learning community coordinating councils, according to section 32-546.01; and

(16) For regional metropolitan transit authority boards, according to section 18-808.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10; Laws 2015, LB575, § 12; Laws 2019, LB492, § 37.
Effective date September 1, 2019.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.

State Board of Education, vacancy, how filled, see section 79-314.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

32-604. Multiple office holding; when allowed.

32-607. Candidate filing forms; contents; filing officers.

32-618. Nomination by petition; number of signatures required.

32-631. Petitions; signature verification; procedure.

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 prior to January 5, 2017, 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, regional metropolitan transit authority, 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; Laws 2016, LB1067, § 5; Laws 2019, LB492, § 38.

Effective date September 1, 2019.

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 following information regarding the candidate: Name; residence address; mailing address if different from the residence address; telephone number; office sought; party affiliation if the office sought is a partisan office; a statement as to whether or not civil penalties are owed pursuant to the Nebraska Political Accountability and Disclosure Act; and, if civil penalties are owed, whether or not a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602. 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, directors of metropolitan utilities 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;

(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; 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; Laws 2015, LB575, § 15; Laws 2017, LB85, § 2; Laws 2019, LB411, § 38.

Operative date September 1, 2019.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed two thousand, except that the number of signatures shall not be required to exceed twenty-five percent of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed two thousand.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1; Laws 2016, LB874, § 2; Laws 2019, LB411, § 39.

Operative date September 1, 2019.

32-631 Petitions; signature verification; procedure.

(1) All petitions that are filed with the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person filing the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if

applicable, and addresses of the signers with the voter registration records to determine if the signers were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the signature is found. If the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Source: Laws 1994, LB 76, § 199; Laws 1997, LB 460, § 3; Laws 1997, LB 764, § 66; Laws 2003, LB 444, § 8; Laws 2019, LB411, § 40. Operative date September 1, 2019.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

32-803. Sample of official ballot; publication; requirements; rate; limitation.

32-816. Official ballots; write-in space provided; exceptions; requirements.

32-803 Sample of official ballot; publication; requirements; rate; limitation.

(1) A sample of the official ballot shall be printed in one or more newspapers of general circulation in the county, city, or village as designated by the election commissioner, county clerk, city council, or village board. The sample shall be printed in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992.

(2) Except for elections conducted in accordance with section 32-960, such publication shall be made not more than fifteen nor less than two days before the day of election, and the same shall appear in only one regular issue of each paper. For elections conducted in accordance with section 32-960, such publication shall be made not less than thirty days before the election.

(3) The form of the ballot so published shall conform in all respects to the form prescribed for official ballots as set forth in sections 32-806, 32-809, and 32-812, but larger or smaller type may be used. When paper ballots are not

being used, a reduced-size facsimile of the official ballot shall be published as it appears on the voting system. Such publication shall include suitable instructions to the voters for casting their ballots using the voting system being used at the election.

(4) The rate charged by the newspapers and paid by the county board for the publication of such sample ballot shall not exceed the rate regularly charged for display advertising in such newspaper in which the publication is made.

Source: Laws 1994, LB 76, § 224; Laws 1997, LB 764, § 73; Laws 2003, LB 358, § 10; Laws 2019, LB411, § 41.
Operative date September 1, 2019.

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 any other voting system authorized for use under the Election Act. 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; Laws 2019, LB411, § 42.
Operative date September 1, 2019.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

- 32-901. Ballots; voting procedure.
- 32-903. Precincts; creation; requirements; election commissioner or county clerk; powers and duties.
- 32-904. Polling places; designation; changes; notification required.
- 32-907. Polling places; accessibility requirements; Secretary of State; duties; training manual; training.
- 32-910. Polling places; obstructions prohibited; restrictions on access.
- 32-916. Ballots; initials required; approval; deposit in ballot box; procedure.
- 32-952. Special election by mail; when.
- 32-956. Special election by mail; replacement ballot; how obtained.

32-901 Ballots; voting procedure.

(1) To vote for a candidate or on a ballot question using a paper ballot that is to be manually counted, the registered voter shall make a cross or other clear, discernable mark in the square opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. Making a cross or other clear, discernable mark in the square constitutes a valid vote.

(2) To vote for a candidate or on a ballot question using a ballot that is to be counted by optical scanner, the registered voter shall fill in the oval or other space provided opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. A mark in the oval or provided space that is discernable by the scanner constitutes a valid vote.

(3) To vote for a candidate or on a ballot question using a voting system with an electronic aspect authorized for use under the Election Act, the registered voter shall follow the instructions for using the voting system to cause a mark to be recorded opposite the candidate or ballot question response for which the voter wishes to vote. Causing such mark to be recorded does not constitute a valid vote. A paper ballot printed to reflect the voter's choices constitutes a valid vote.

Source: Laws 1994, LB 76, § 244; Laws 2003, LB 358, § 16; Laws 2005, LB 566, § 31; Laws 2019, LB411, § 43.
Operative date September 1, 2019.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8; Laws 2019, LB411, § 44.
Operative date September 1, 2019.

32-904 Polling places; designation; changes; notification required.

(1) The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons as provided in section 32-907.

(2) When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards.

(3) Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(4) Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6; Laws 2019, LB411, § 45.
Operative date September 1, 2019.

32-907 Polling places; accessibility requirements; Secretary of State; duties; training manual; training.

(1) All polling places shall be accessible to all registered voters and shall be in compliance with the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended. In addition, all polling places shall be modified or relocated to architecturally barrier-free buildings to provide unobstructed access to such polling places by people with physical limitations as required by this section. At least one voting booth shall be so constructed as to provide easy access for people with limitations, shall

accommodate a wheelchair, and shall have a cover or barrier to provide privacy. The modifications required by this section may be of a temporary nature to provide such unobstructed access only on election day.

(2) All polling places shall meet the requirements of the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended, including, but not limited to, requirements for:

(a) Parking;

(b) An exterior route to an accessible entrance;

(c) Polling place entrances;

(d) The route from the entrance into the voting area;

(e) Voting areas, including, but not limited to, a sign (i) that indicates that assistance is available, (ii) that contains the contact telephone number approved by the Secretary of State, and (iii) posted with visible lettering that is two inches, plus one-eighth inch per foot of viewing distance more than one hundred eighty inches from viewing points;

(f) Ramps;

(g) Lifts; and

(h) Elevators.

(3) The Secretary of State shall develop, print, and make publicly available a training manual regarding accessibility requirements of the Election Act, the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended.

(4) The Secretary of State shall include in the biennial training for election commissioners and county clerks current standards for accessibility. All poll workers shall receive training regarding accessibility between appointment and serving at an election.

Source: Laws 1994, LB 76, § 250; Laws 2019, LB411, § 46.
Operative date September 1, 2019.

32-910 Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place or building and shall arrest any person obstructing such passageways. Other than a registered voter engaged in receiving, preparing, or marking a ballot or depositing a ballot in a ballot box or a precinct-based optical scanner at the polling place, an election commissioner, a county clerk, a precinct inspector, a district inspector, a judge of election, a clerk of election, or a member of a counting board, no person shall be permitted to be within eight feet of the ballot boxes or within eight feet of any ballots being counted by a counting board.

Source: Laws 1994, LB 76, § 253; Laws 1997, LB 764, § 82; Laws 2019, LB411, § 47.
Operative date September 1, 2019.

32-916 Ballots; initials required; approval; deposit in ballot box; procedure.

(1) Two judges of election or a precinct inspector and a judge of election shall affix their initials to the official ballots. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope or sleeve so as to conceal the voting marks and to expose the initials affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving the enclosure in which the voting booths are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials upon the ballot and deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the registered voter. No judge of election shall deposit any ballot in a ballot box unless the ballot has been identified as having the appropriate initials. Any ballot not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot is in order, the judge shall deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the voter and the voter shall promptly leave the polling place. If a precinct uses a precinct-based optical scanner and a ballot is identified by the scanner as containing an overvote or an undervote, the voter shall be notified of the consequence of an overvote and the right to vote in the case of an undervote, whichever is applicable. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a provisional ballot as provided in section 32-915, the judge of election shall give the voter written information that states that the voter may determine if his or her vote was counted and, if not, the reason that the vote was not counted by accessing the system created pursuant to section 32-202 and the judge of election shall ensure that the appropriate information is on the outside of the envelope in which the ballot is enclosed or attached to the envelope, attach the statement required by section 32-915 if not contained on the envelope, and place the entire envelope into the ballot box. Upon receiving a provisional ballot as provided in section 32-915.01, the judge of election shall comply with the requirements for a provisional ballot under this subsection, except that a provisional ballot cast pursuant to section 32-915.01 shall be kept separate from the other ballots cast at the election.

Source: Laws 1994, LB 76, § 259; Laws 1997, LB 764, § 88; Laws 1999, LB 802, § 15; Laws 2002, LB 1054, § 21; Laws 2003, LB 358, § 26; Laws 2003, LB 359, § 6; Laws 2005, LB 566, § 38; Laws 2019, LB411, § 48.

Operative date September 1, 2019.

32-952 Special election by mail; when.

If a political subdivision decides to place a candidate or an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision or a district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(2) Only registered voters of the political subdivision or the district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(3) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(4) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(5) The election commissioner or county clerk has submitted a written plan to the Secretary of State within five business days after receiving the resolution from the political subdivision to hold the election; and

(6) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include 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.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24; Laws 2015, LB575, § 23; Laws 2019, LB411, § 49.
Operative date September 1, 2019.

32-956 Special election by mail; replacement ballot; how obtained.

If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement verified on oath or affirmation on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by 5 p.m. on the date set for the election. If the voter mails the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the second Friday preceding the election. If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15; Laws 2014, LB946, § 18; Laws 2019, LB411, § 50.
Operative date September 1, 2019.

ARTICLE 10
COUNTING AND CANVASSING BALLOTS

Section

- 32-1002. Provisional ballots; when counted.
- 32-1007. Ballots; write-in votes; improper name; rejected.
- 32-1008. Write-in votes; totals; how reported.
- 32-1010. Ballots; where counted.
- 32-1012. Centralized location; partial returns; when; designation of location; counting procedure.
- 32-1013. Counting location; watchers; counting board members; oath; authorized observers.
- 32-1041. Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

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 32-308, 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 32-308, 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 business 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; Laws 2014, LB661, § 15; Laws 2019, LB411, § 51.
Operative date September 1, 2019.

32-1007 Ballots; write-in votes; improper name; rejected.

If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of, no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5; Laws 2018, LB377, § 4; Laws 2019, LB411, § 52.
Operative date September 1, 2019.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6; Laws 2019, LB411, § 53.
Operative date September 1, 2019.

32-1010 Ballots; where counted.

Ballots shall be counted at a centralized location or at polling places as provided in sections 32-1012 to 32-1018. If counting takes place at a centralized location, the receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12; Laws 2019, LB411, § 54.
Operative date September 1, 2019.

32-1012 Centralized location; partial returns; when; designation of location; counting procedure.

(1) In counties using optical scanners to count the ballots at a centralized location, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked or sealed, to the centralized location or locations at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of ballots. The election commissioner or county clerk shall designate the location or locations for counting the ballots and may designate a location or locations in any county. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical

scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

(2) In counties using optical scanners to count the ballots at polling places, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked, sealed, or digitally secured, to the election office at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of partial returns. The election commissioner or county clerk shall designate polling places as locations for counting the ballots. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

Source: Laws 1994, LB 76, § 306; Laws 2003, LB 358, § 34; Laws 2019, LB411, § 55.

Operative date September 1, 2019.

32-1013 Counting location; watchers; counting board members; oath; authorized observers.

(1) In each counting location, watchers may be appointed to be present and observe the counting of ballots. Each political party shall be entitled to one watcher at each location appointed and supplied with credentials by the county central committee of such political party. The district court having jurisdiction over any such county may appoint additional watchers for any location.

(2) The watchers and the members of the counting board shall take the following oath administered by the election commissioner or county clerk or an election official designated by the election commissioner or county clerk: I do solemnly swear that I will not in any manner make known to anyone other than duly authorized election officials the results of the votes as they are being counted until the polls have officially closed and the summary of votes cast is delivered to the election commissioner or county clerk.

(3) Except for polling places using precinct-based optical scanners, all other persons shall be excluded from the place where the counting is being conducted except for observers authorized by the election commissioner or county clerk. No such observer shall be connected with any candidate, political party, or measure on the ballot.

Source: Laws 1994, LB 76, § 307; Laws 2019, LB411, § 56.

Operative date September 1, 2019.

32-1041 Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

(1) The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners.

(2) No electronic voting system shall be used under the Election Act.

(3) Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. The Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14; Laws 2019, LB411, § 57.

Operative date September 1, 2019.

ARTICLE 11

CONTEST OF ELECTIONS AND RECOUNTS

Section

32-1121. Recount requested by losing candidate; procedure; costs.

32-1121 Recount requested by losing candidate; procedure; costs.

If any candidate failed to be nominated or elected by more than the margin provided in section 32-1119, the losing candidate may submit a certified written request for a recount at his or her expense. The request shall be filed with the filing officer with whom the candidate filed for election not later than the tenth day after the county canvassing board or the board of state canvassers concludes. The recount shall be conducted as provided in section 32-1119. Prior to conducting the recount, the cost of the recount shall be determined by the election commissioner or county clerk and the requesting candidate shall be so notified. The candidate requesting the recount shall pay the estimated cost of the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund.

Source: Laws 1994, LB 76, § 364; Laws 2019, LB411, § 58.

Operative date September 1, 2019.

ARTICLE 12

ELECTION COSTS

Section

32-1203. Political subdivisions; election expenses; duties; determination of charge.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire district, natural resources district, regional metropolitan transit authority, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, and library board shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section. The districts listed in this subsection shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be one hundred dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11; Laws 2015, LB575, § 27; Laws 2019, LB492, § 39.

Effective date September 1, 2019.

ARTICLE 13

RECALL

Section

32-1303. Recall petition; signers and circulators; requirements; notification.

32-1306. Filing clerk; notification required; recall election; when held; failure to order; effect.

32-1309. Recall petition filing form prohibited; when.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election and (b) for a member of a

governing body of a village, the petition shall be signed by registered voters of the village equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the filing form. The filing clerk shall prepare the petition papers within five business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within twenty days after being notified by the filing clerk that the petition papers are available. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12; Laws 2018, LB377, § 5; Laws 2019, LB411, § 59.

Operative date September 1, 2019.

32-1306 Filing clerk; notification required; recall election; when held; failure to order; effect.

(1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall order an election to be held not less than fifty nor more than eighty days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day. All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation at least twenty-four days prior to the election, otherwise the recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or refuses to order a recall election within the time required, the election may be ordered by the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13; Laws 2019, LB411, § 60.
Operative date September 1, 2019.

32-1309 Recall petition filing form prohibited; when.

No recall petition filing form shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1994, LB 76, § 382; Laws 2019, LB411, § 61.
Operative date September 1, 2019.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

- 32-1405. Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.
- 32-1407. Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.
- 32-1409. Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

32-1405 Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed

with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition.

(2) Upon receipt of the filing, the Secretary of State shall transmit the text of the proposed measure to the Revisor of Statutes. The Revisor of Statutes shall review the proposed measure and suggest changes as to form and draftsmanship. The revisor shall complete the review within ten days after receipt from the Secretary of State. The Secretary of State shall provide the results of the review and suggested changes to the sponsor but shall otherwise keep the proposed measure and the review confidential for five days after receipt of the review by the sponsor. The Secretary of State shall then maintain the proposed measure and the opinion as public information and as a part of the official record of the initiative. The suggested changes may be accepted or rejected by the sponsor.

(3) The Secretary of State shall prepare five camera-ready copies of the petition from the information filed by the sponsor and any changes accepted by the sponsor and shall provide the copies to the sponsor within five business days after receipt of the review required in subsection (2) of this section. The sponsor shall print the petitions to be circulated from the forms provided. Prior to circulation, the sponsor shall file a final blank copy of the petition to be circulated with the Secretary of State.

Source: Laws 1994, LB 76, § 387; Laws 1995, LB 337, § 5; Laws 2019, LB411, § 62.

Operative date September 1, 2019.

32-1407 Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.

(1) Initiative petitions shall be filed in the office of the Secretary of State at least four months prior to the general election at which the proposal would be submitted to the voters.

(2) When a copy of the form of any initiative petition is filed with the Secretary of State prior to obtaining signatures, the issue presented by such petition shall be placed before the voters at the next general election occurring at least four months after the date that such copy is filed if the signed petitions are found to be valid and sufficient. All signed initiative petitions shall become invalid on the date of the first general election occurring at least four months after the date on which the copy of the form is filed with the Secretary of State.

(3) Petitions invoking a referendum shall be filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed has adjourned sine die or has adjourned for more than ninety days.

(4) At the time of filing the signed petitions, at least one sponsor shall sign an affidavit certifying that the petitions contain a sufficient number of signatures to place the issue on the ballot if such number of signatures were found to be valid.

Source: Laws 1994, LB 76, § 389; Laws 2019, LB411, § 63.

Operative date September 1, 2019.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

(1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name and number or voting precinct, and city, village, or post office address with the voter registration records to determine whether the signer was a registered voter. The determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. If the Secretary of State receives reports from a sufficient number of the counties that signatures in excess of one hundred ten percent of the number necessary to place the issue on the ballot have been verified, the Secretary of State may instruct the election commissioners and county clerks in all counties to stop verifying signatures and certify the number of signatures verified as of receipt of the instruction from the Secretary of State.

(2) Upon completion of the determination of registration, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to any page or pages of the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by

the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical and technical errors in a petition shall be disregarded if the forms prescribed in sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1; Laws 2019, LB411, § 64. Operative date September 1, 2019.

ARTICLE 15

VIOLATIONS AND PENALTIES

Section

32-1524. Electioneering; circulation of petitions; prohibited acts; penalty.

32-1524 Electioneering; circulation of petitions; prohibited acts; penalty.

(1) For purposes of this section:

(a) Electioneering means the deliberate, visible display or audible or physical dissemination of information for the purpose of advocating for or against:

(i) Any candidate on the ballot for the election at which such display or dissemination is occurring;

(ii) Any elected officeholder of a state constitutional office or federal office at the time of the election at which such display or dissemination is occurring;

(iii) Any political party on the ballot for the election at which such display or dissemination is occurring; or

(iv) Any measure on the ballot for the election at which such display or dissemination is occurring; and

(b) Information includes:

(i) Such a candidate's name, likeness, logo, or symbol;

(ii) Such a ballot measure's number, title, subject matter, logo, or symbol;

(iii) A button, hat, pencil, pen, shirt, sign, or sticker containing information prohibited by this section;

(iv) Audible information prohibited by this section; and

(v) Literature or any writing or drawing referring to a candidate, officeholder, or ballot measure described in subdivision (a) of this subsection.

(2) No judge or clerk of election or precinct or district inspector shall do any electioneering while acting as an election official.

(3) No person shall do any electioneering or circulate petitions within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of any such polling place or building except as otherwise provided in subsection (4) of this section.

(4) Subject to any local ordinance, a person may display yard signs on private property within two hundred feet of a polling place or building designated for voters to cast ballots if the property is not under common ownership with the property on which the polling place or building is located.

(5) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 423; Laws 2006, LB 940, § 2; Laws 2016, LB874, § 7; Laws 2019, LB411, § 65.

Operative date September 1, 2019.

CHAPTER 33

FEES AND SALARIES

Section
33-109. Register of deeds; county clerk; fees.

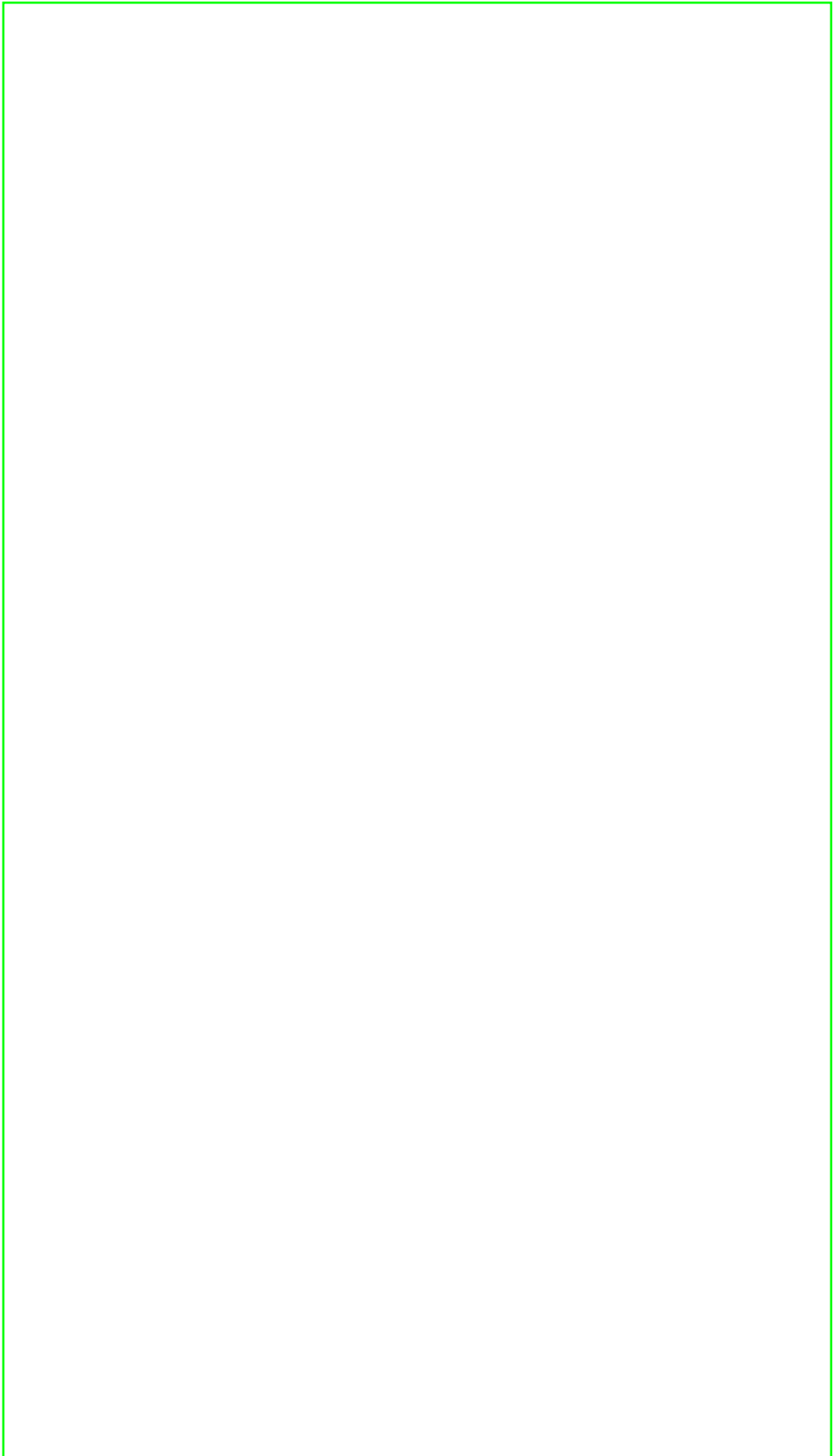
33-109 Register of deeds; county clerk; fees.

(1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

Source: Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4; Laws 2017, LB152, § 2; Laws 2017, LB268, § 7; Laws 2019, LB593, § 5.

Effective date May 31, 2019.



CHAPTER 35

FIRE COMPANIES AND FIREFIGHTERS

Article.

5. Rural and Suburban Fire Protection Districts. 35-506, 35-509.
12. Mutual Finance Assistance Act. 35-1204 to 35-1207.

ARTICLE 5

RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section

- 35-506. District; vote on organization; officers; terms; compensation.
- 35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.

35-506 District; vote on organization; officers; terms; compensation.

(1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.

(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.

(3) The members of the board of directors of a rural or suburban fire protection district may receive up to fifty dollars for each meeting of the board,

but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9; Laws 2019, LB63, § 1.
Effective date March 8, 2019.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

(2)(a) For any rural or suburban fire protection district that has levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before September 20 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(a) of section 35-508, all such levies being subject to subsection (10) of section 77-3442. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section.

(b) For any rural or suburban fire protection district that does not have levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year pursuant to subsection (3) of section 77-3443. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(b) of section 35-508, all such levies being subject to section 77-3443. The tax shall be

collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(3) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5; Laws 2015, LB325, § 4; Laws 2019, LB63, § 2.
Effective date March 8, 2019.

ARTICLE 12

MUTUAL FINANCE ASSISTANCE ACT

Section

35-1204. Mutual finance organization; creation by agreement; tax levy.

35-1206. Distributions from fund; amount; disqualification; when.

35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1204 Mutual finance organization; creation by agreement; tax levy.

(1) A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall:

(a) Have a duration of at least three years;

(b) Require that all members of the mutual finance organization levy the same agreed-upon property tax rate within their boundaries for one out of every three tax years covered by the agreement; and

(c) Require that all members of the mutual finance organization levy no more than such agreed-upon property tax rate for the remaining tax years covered by the agreement.

(2) The property tax rates described in subsection (1) of this section shall be levied for the purpose of jointly funding the operations of all members of the

mutual finance organization. All such property tax rates shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70; Laws 2019, LB63, § 3.

Effective date March 8, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

35-1206 Distributions from fund; amount; disqualification; when.

(1) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization. If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.

(2) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate that complies with subsection (1) of section 35-1204, as required under the mutual finance organization agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy a tax rate that complies with subsection (1) of section 35-1204, as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8; Laws 2019, LB63, § 4.

Effective date March 8, 2019.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application and any forms required by the State Treasurer. Such application and forms shall be submitted to the State Treasurer by July 1. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional

financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide electronic copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before August 15, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

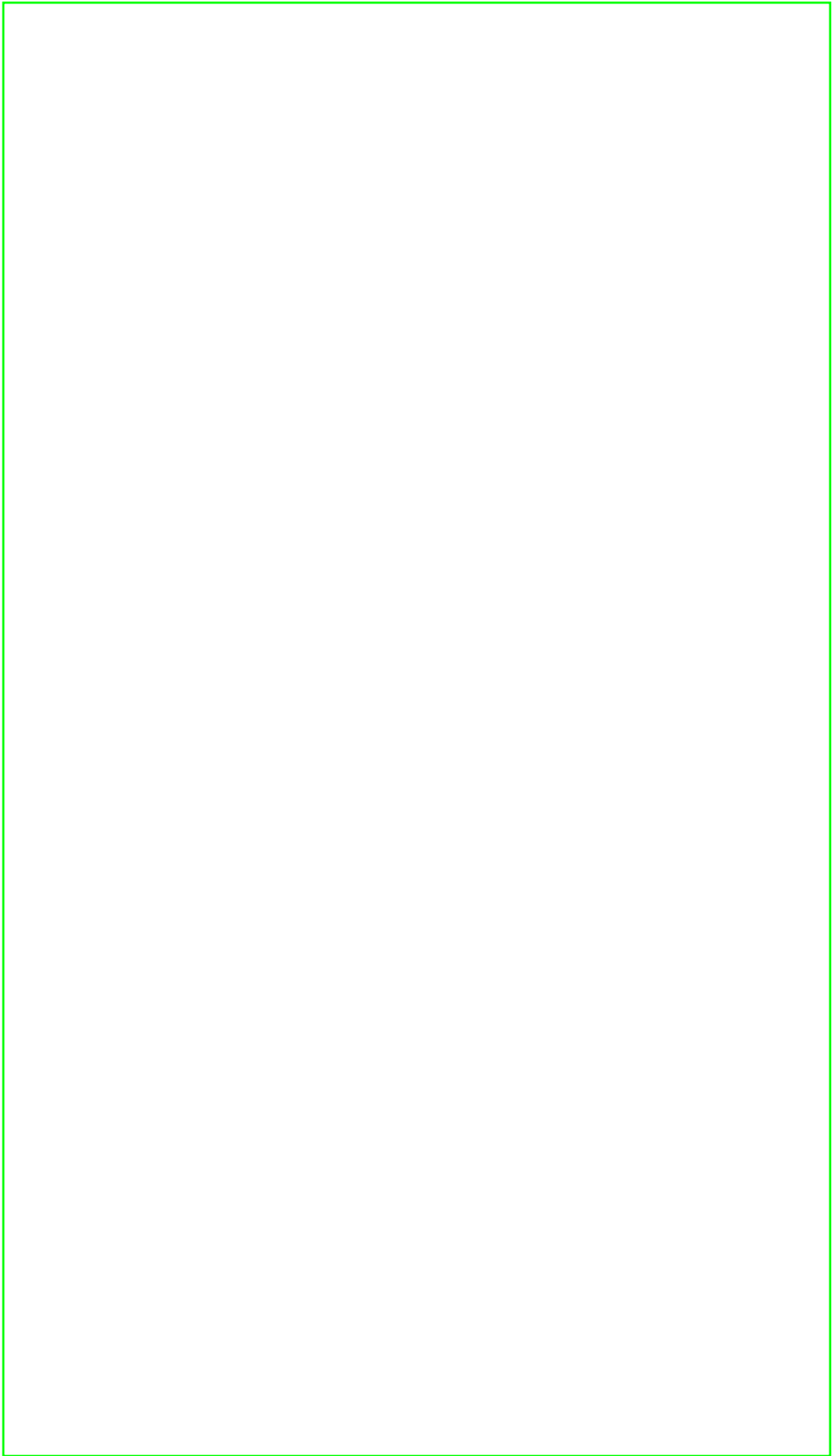
(3) Except as provided in subsection (4) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible, to be paid on or before November 1 and May 1. If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants. Funds remaining in the Mutual Finance Assistance Fund on June 1 shall be transferred to the General Fund before July 1.

(4) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made pursuant to the Mutual Finance Assistance Act as provided in subsection (1) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6; Laws 2012, LB782, § 34; Laws 2019, LB63, § 5.
Effective date March 8, 2019.

Cross References

Administrative Procedure Act, see section 84-920.



CHAPTER 36

FRAUD AND VOIDABLE TRANSACTIONS

Article.

7. Uniform Fraudulent Transfer Act. Repealed.
8. Uniform Voidable Transactions Act. 36-801 to 36-815.

ARTICLE 7

UNIFORM FRAUDULENT TRANSFER ACT

Section

- 36-701. Repealed. Laws 2019, LB70, § 20.
36-702. Repealed. Laws 2019, LB70, § 20.
36-703. Repealed. Laws 2019, LB70, § 20.
36-704. Repealed. Laws 2019, LB70, § 20.
36-705. Repealed. Laws 2019, LB70, § 20.
36-706. Repealed. Laws 2019, LB70, § 20.
36-707. Repealed. Laws 2019, LB70, § 20.
36-708. Repealed. Laws 2019, LB70, § 20.
36-709. Repealed. Laws 2019, LB70, § 20.
36-710. Repealed. Laws 2019, LB70, § 20.
36-711. Repealed. Laws 2019, LB70, § 20.
36-712. Repealed. Laws 2019, LB70, § 20.

36-701 Repealed. Laws 2019, LB70, § 20.

36-702 Repealed. Laws 2019, LB70, § 20.

36-703 Repealed. Laws 2019, LB70, § 20.

36-704 Repealed. Laws 2019, LB70, § 20.

36-705 Repealed. Laws 2019, LB70, § 20.

36-706 Repealed. Laws 2019, LB70, § 20.

36-707 Repealed. Laws 2019, LB70, § 20.

36-708 Repealed. Laws 2019, LB70, § 20.

36-709 Repealed. Laws 2019, LB70, § 20.

36-710 Repealed. Laws 2019, LB70, § 20.

36-711 Repealed. Laws 2019, LB70, § 20.

36-712 Repealed. Laws 2019, LB70, § 20.

ARTICLE 8

UNIFORM VOIDABLE TRANSACTIONS ACT

Section

- 36-801. Short title.
36-802. Definitions.

Section

- 36-803. Insolvency.
- 36-804. Value.
- 36-805. Transfer or obligation voidable as to present or future creditor.
- 36-806. Transfer or obligation voidable as to present creditor.
- 36-807. When transfer is made or obligation is incurred.
- 36-808. Remedies of creditor.
- 36-809. Defenses, liability, and protection of transferee or obligee.
- 36-810. Extinguishment of claim for relief.
- 36-811. Governing law.
- 36-812. Application to series organization.
- 36-813. Supplementary provisions.
- 36-814. Uniformity of application and construction.
- 36-815. Relation to Electronic Signatures in Global and National Commerce Act.

36-801 Short title.

Sections 36-801 to 36-815 shall be known and may be cited as the Uniform Voidable Transactions Act.

Source: Laws 2019, LB70, § 1.

Effective date September 1, 2019.

36-802 Definitions.

As used in the Uniform Voidable Transactions Act:

(1) Affiliate means:

(i) a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(ii) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) Asset means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) Claim, except as used in claim for relief, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) Creditor means a person that has a claim.

(5) Debt means liability on a claim.

(6) Debtor means a person that is liable on a claim.

(7) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) Insider includes:

(i) if the debtor is an individual:

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in subdivision (8)(i)(B) of this section; or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation:

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in subdivision (8)(ii)(D) of this section; or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership:

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in subdivision (8)(iii)(C) of this section; or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(9) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) Organization means a person other than an individual.

(11) Person means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) Property means anything that may be the subject of ownership.

(13) 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.

(14) Relative means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) Sign means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(17) Valid lien means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: Laws 2019, LB70, § 2.

Effective date September 1, 2019.

36-803 Insolvency.

(a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Voidable Transactions Act.

(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: Laws 2019, LB70, § 3.

Effective date September 1, 2019.

36-804 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (a)(2) of section 36-805 and section 36-806, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or

disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: Laws 2019, LB70, § 4.

Effective date September 1, 2019.

36-805 Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 5.

Effective date September 1, 2019.

36-806 Transfer or obligation voidable as to present creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to subsection (b) of section 36-803, a creditor making a claim for relief under subsection (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 6.

Effective date September 1, 2019.

36-807 When transfer is made or obligation is incurred.

For the purposes of the Uniform Voidable Transactions Act:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Voidable Transactions Act that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under the act, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) an obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Source: Laws 2019, LB70, § 7.

Effective date September 1, 2019.

36-808 Remedies of creditor.

(a) In an action for relief against a transfer or obligation under the Uniform Voidable Transactions Act, a creditor, subject to the limitations in section 36-809, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: Laws 2019, LB70, § 8.

Effective date September 1, 2019.

36-809 Defenses, liability, and protection of transferee or obligee.

(a) A transfer or obligation is not voidable under subdivision (a)(1) of section 36-805 against a person that took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under subdivision (a)(1) of section 36-808, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) the first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in subdivision (b)(1)(ii)(A) of this section.

(2) Recovery pursuant to subdivision (a)(1) or subsection (b) of section 36-808 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (b)(1)(i) or (ii) of this section.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under the Uniform Voidable Transactions Act, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) a lien on or a right to retain an interest in the asset transferred;
- (2) enforcement of an obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (a)(2) of section 36-805 or section 36-806 if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) enforcement of a security interest in compliance with article 9, Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subsection (b) of section 36-806:

- (1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
- (2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

- (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.
- (2) Except as otherwise provided in subdivisions (g)(3) and (4) of this section, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.
- (3) The transferee has the burden of proving the applicability to the transferee of subdivision (b)(1)(ii)(A) or (B) of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Source: Laws 2019, LB70, § 9.

Effective date September 1, 2019.

36-810 Extinguishment of claim for relief.

A claim for relief with respect to a transfer or obligation under the Uniform Voidable Transactions Act is extinguished unless action is brought:

(1) under subdivision (a)(1) of section 36-805, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision (a)(2) of section 36-805 or subsection (a) of section 36-806, not later than four years after the transfer was made or the obligation was incurred; or

(3) under subsection (b) of section 36-806, not later than one year after the transfer was made.

Source: Laws 2019, LB70, § 10.

Effective date September 1, 2019.

36-811 Governing law.

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under the Uniform Voidable Transactions Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Source: Laws 2019, LB70, § 11.

Effective date September 1, 2019.

36-812 Application to series organization.

(a) In this section:

(1) Protected series means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and

not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of the Uniform Voidable Transactions Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Source: Laws 2019, LB70, § 12.
Effective date September 1, 2019.

36-813 Supplementary provisions.

Unless displaced by the provisions of the Uniform Voidable Transactions Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Source: Laws 2019, LB70, § 13.
Effective date September 1, 2019.

36-814 Uniformity of application and construction.

The Uniform Voidable Transactions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 2019, LB70, § 14.
Effective date September 1, 2019.

36-815 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Voidable Transactions Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2019, 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 2019, LB70, § 15.
Effective date September 1, 2019.

CHAPTER 37

GAME AND PARKS

Article.

2. Game Law General Provisions. 37-201 to 37-247.01.
4. Permits and Licenses.
 - (b) Special Permits and Licenses. 37-455 to 37-498.
8. Nongame and Endangered Species Conservation Act. 37-806, 37-811.
12. State Boat Act. 37-1214 to 37-1293.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section

- 37-201. Law, how cited.
 37-202. Definitions, where found.
 37-247.01. Wildlife abatement, defined.

37-201 Law, how cited.

Sections 37-201 to 37-811 and 37-1501 to 37-1510 and the State Park System Construction Alternatives Act 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; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1; Laws 2015, LB142, § 1; Laws 2016, LB474, § 1; Laws 2018, LB775, § 1; Laws 2019, LB374, § 1.

Effective date September 1, 2019.

Cross References

State Park System Construction Alternatives Act, see section 37-1701.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247.01 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72, § 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws

1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15; Laws 2012, LB391, § 2; Laws 2019, LB374, § 2.
Effective date September 1, 2019.

37-247.01 Wildlife abatement, defined.

Wildlife abatement means the use of a trained raptor to frighten, flush, haze, take, or kill certain wildlife to manage depredation, damage, or other threats to human health and safety or commerce caused by such wildlife.

Source: Laws 2019, LB374, § 3.

Effective date September 1, 2019.

ARTICLE 4

PERMITS AND LICENSES

(b) SPECIAL PERMITS AND LICENSES

Section

- 37-455. Limited deer, antelope, wild turkey, or elk permit; conditions; fee.
37-497. Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.
37-498. Raptors; take or maintain; permit required.

(b) SPECIAL PERMITS AND LICENSES

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 or a member of such person's immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the

described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes. Only a person who is a qualifying landowner or leaseholder or a member of 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, member of a person's immediate family means and is limited to the spouse of such person, any child or stepchild of such person or of the spouse of such person, any spouse of any such child or stepchild, any sibling of such person sharing ownership in the property, and any spouse of any such sibling.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in

the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp., 1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7; Laws 2019, LB127, § 1.
Effective date September 1, 2019.

37-497 Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors. The commission may issue raptor

permits for the taking and possession of raptors for the purpose of practicing falconry or wildlife abatement.

(2) A raptor permit for falconry may be issued only to a resident of the state who has paid the fees required in this subsection and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass the examination, he or she shall not be entitled to reapply for a raptor permit for falconry for a period of six months after the date of the examination. No person under twelve years of age shall be issued a raptor permit for falconry. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid raptor permit for falconry and appropriate experience. All raptor permits for falconry shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) A raptor permit for wildlife abatement may be issued only to a resident of the state who has paid the fees required in this subsection and has agreed to comply with federal law concerning raptors used for wildlife abatement as attested to in his or her application. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. No person under twelve years of age shall be issued a raptor permit for wildlife abatement. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored and supervised by an adult who has a valid raptor permit for wildlife abatement and appropriate experience. All raptor permits for wildlife abatement shall be nontransferable and shall expire three years after the date of issuance. The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state who has paid the fee required in this subsection. The fee for each permit shall be not more than three hundred five dollars, as established by the commission pursuant to section 37-327. The permit shall be nontransferable, shall expire three years after the date of issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation permits.

(5) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred sixty-five dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be

nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14; Laws 2011, LB41, § 23; Laws 2016, LB745, § 18; Laws 2019, LB374, § 4.

Effective date September 1, 2019.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a raptor permit for falconry, a raptor permit for wildlife abatement, a captive propagation permit, or a raptor collecting permit as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a raptor permit for falconry, a raptor permit for wildlife abatement, or a captive propagation permit issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24; Laws 2019, LB374, § 5.

Effective date September 1, 2019.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

Section

37-806. Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

37-811. Wildlife Conservation Fund; created; use; investment.

37-806 Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act. The commission may determine that any such threatened species is an endangered species throughout all or any portion of the range of such species within this state.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall by regulation determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, sporting, scientific, educational, or other purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence within this state.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission may not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

(i) Provided public notice of such proposed action by publication in a newspaper of general circulation in each county in that portion of the subject species' range in which it is endangered or threatened or, if the subject species' range extends over more than five counties, in a newspaper of statewide circulation distributed in the county;

(ii) Provided notice of such proposed action to and allowed comment from the Department of Agriculture, the Department of Environment and Energy, and the Department of Natural Resources;

(iii) Provided notice of such proposed action to and allowed comment from each natural resources district and public power district located in that portion of the subject species' range in which it is endangered or threatened;

(iv) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed;

(v) Allowed at least sixty days following publication for comment from the public and other interested parties;

(vi) Held at least one public hearing on such proposed action in each game and parks commissioner district of the subject species' range in which it is endangered or threatened;

(vii) Submitted the scientific, commercial, and other data which is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such an agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For species proposed to be added under this subsection but not for species proposed to be removed under this subsection, developed an outline of the potential impacts, requirements, or regulations that may be placed on private landowners, or other persons who hold state-recognized property rights on behalf of themselves or others, as a result of the listing of the species or the

development of a proposed program for the conservation of the species as required in subsection (1) of section 37-807.

The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the listing of a species and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(c) When the commission is proposing to add or remove a species under this subsection, public notice under subdivision (3)(b)(i) of this section shall include, but not be limited to, (i) the species proposed to be listed and a description of that portion of its range in which the species is endangered or threatened, (ii) a declaration that the commission submitted the data which is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(d) In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such lists after having first published a public notice that such an emergency situation exists together with a summary of facts which support such determination.

(4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or political subdivisions thereof, or by any other person which may affect the species under consideration.

(5) The commission shall issue regulations containing a list of all species of wildlife and wild plants normally occurring within this state which it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence which warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Take any such species within this state;

(c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species; or

(d) Violate any regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species; or

(c) Violate any regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants which enters this state from another state or from a point outside the territorial limits of the United States and which is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) Any law, regulation, or ordinance of any political subdivision of this state which applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively (a) permit that which is prohibited by the act or by any regulation which implements the act or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any regulation which implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33; Laws 2019, LB302, § 19.

Operative date July 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

37-811 Wildlife Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. The fund shall consist of money credited pursuant to section 60-3,238 and any other money as determined by the Legislature. The fund shall also consist of money transferred from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife 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 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18; Laws 2019, LB356, § 1.

Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 12

STATE BOAT ACT

Section

- 37-1214. Motorboat; registration; period valid; application; registration fee; Aquatic Invasive Species Program fee; aquatic invasive species stamp.
- 37-1278. Certificate of title; application; contents; issuance; transfer of motorboat.
- 37-1280. Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.
- 37-1292. Salvage certificate of title; terms, defined.
- 37-1293. Salvage branded certificate of title; when issued; procedure.

37-1214 Motorboat; registration; period valid; application; registration fee; Aquatic Invasive Species Program fee; aquatic invasive species stamp.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a registration fee for the three-year period of not less than twenty dollars and not more than twenty-three dollars for Class 1 boats, not less than forty dollars and not more than forty-six dollars

for Class 2 boats, not less than sixty dollars and not more than sixty-seven dollars and fifty cents for Class 3 boats, and not less than one hundred dollars and not more than one hundred fifteen dollars for Class 4 boats, as established by the commission pursuant to section 37-327. The owner of the motorboat shall also pay a fee established pursuant to section 37-327 of not less than five dollars and not more than ten dollars for the Aquatic Invasive Species Program at the time of registration or renewal.

(2) The owner of a motorboat not registered in Nebraska shall purchase an aquatic invasive species stamp for the Aquatic Invasive Species Program valid for one calendar year prior to launching into any waters of the state. The cost of such one-year stamp shall be established pursuant to section 37-327 and be not less than ten dollars and not more than fifteen dollars plus an issuance fee pursuant to section 37-406. Such one-year stamp may be purchased electronically or through any vendor authorized by the commission to sell other permits and stamps issued under the Game Law pursuant to section 37-406. The aquatic invasive species stamp shall be permanently affixed on the starboard and rearward side of the vessel. The proceeds from the sale of stamps shall be remitted to the State Game Fund.

(3) This subsection applies beginning on an implementation date designated by the Director of Motor Vehicles in cooperation with the commission. The director shall designate an implementation date on or before January 1, 2021, for motorboat registration. In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6; Laws 2015, LB142, § 3; Laws 2015, LB642, § 1; Laws 2019, LB270, § 1.
Effective date September 1, 2019.

Cross References

Game Law, see section 37-201.

37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 76-1607 shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i)(A) the full legal name as defined in section 60-468.01 of each owner or (B) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4)(a) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by a married couple, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. If the purchaser of a motorboat does not apply for a certificate of title in accordance with subdivision (4)(a) of this section within thirty days after the sale of the motorboat, the seller of such motorboat may request the department to update the electronic certificate of title record to reflect the sale. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2; Laws 2017, LB492, § 10; Laws 2019, LB111, § 1; Laws 2019, LB270, § 2. Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB111, section 1, with LB270, section 2, to reflect all amendments.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.

(1) The Department of Motor Vehicles may adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290. The county treasurers shall conform to any such rules and regulations and act at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by the county treasurers under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county treasurers except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county treasurers. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the certificate, and the county treasurer shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and demand the return of the certificate of number and the holder of the certificate of number shall return the certificate to the commission immediately.

(2) The department may remove a lien on a certificate of title when such lien was improperly noted if evidence of the improperly noted lien is submitted to

the department and the department finds the evidence sufficient to support removal of the lien. The department shall send notification prior to removal of the lien to the last-known address of the lienholder. The lienholder must respond within thirty days after the date on the notice and provide sufficient evidence to support that the lien should not be removed. If the lienholder fails to respond to the notice, the lien may be removed by the department.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17; Laws 2012, LB801, § 17; Laws 2018, LB909, § 2; Laws 2019, LB270, § 3.
Effective date September 1, 2019.

37-1292 Salvage certificate of title; terms, defined.

For purposes of this section and sections 37-1293 to 37-1298:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a motorboat plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model motorboat means a motorboat which has (a) a manufacturer's model year designation of, or later than, the year in which the motorboat was wrecked, damaged, or destroyed, or any of the six preceding years, or (b) a retail value of more than ten thousand dollars until January 1, 2006, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter;

(3) Previously salvaged means the designation of a rebuilt motorboat which was previously required to be issued a salvage branded certificate of title;

(4) Retail value means the actual cash value, fair market value, or retail value of a motorboat as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable motorboats with respect to condition and equipment; and

(5) Salvage means the designation of a motorboat which is:

(a) A late model motorboat which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the motorboat to its condition immediately before it was wrecked, damaged, or destroyed and to restore the motorboat to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the motorboat at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the motorboat as a salvage motorboat by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the motorboat.

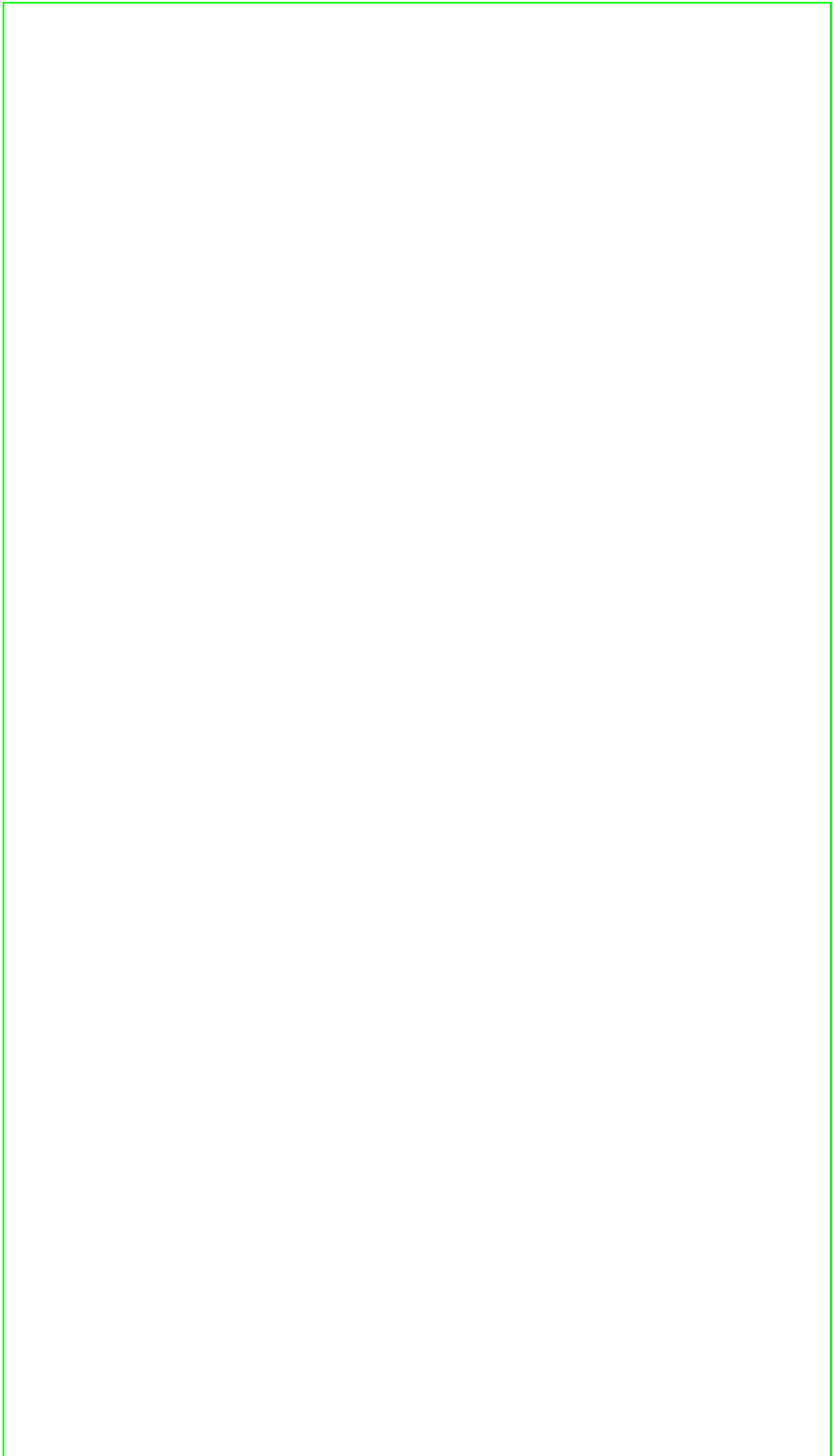
Source: Laws 2004, LB 560, § 5; Laws 2019, LB270, § 4.
Effective date September 1, 2019.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the

county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, the insurance company shall report electronically to the department using the electronic reporting system. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer. Upon receipt of the certificate of title, the county treasurer shall issue a salvage branded certificate of title for the motorboat unless the motorboat has been rebuilt or reconstructed, in which case the county treasurer shall issue a previously salvaged branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26; Laws 2018, LB909, § 6; Laws 2019, LB270, § 5.
Effective date September 1, 2019.



CHAPTER 38

HEALTH OCCUPATIONS AND PROFESSIONS

Article.

1. Uniform Credentialing Act. 38-101 to 38-1,145.
10. Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. 38-1001, 38-10,172.
12. Emergency Medical Services Practice Act. 38-1220.
17. Massage Therapy Practice Act. 38-1701 to 38-1725.
20. Medicine and Surgery Practice Act. 38-2001, 38-2063.
28. Pharmacy Practice Act. 38-2801 to 38-2894.

ARTICLE 1

UNIFORM CREDENTIALING ACT

Section

- | | |
|------------|--|
| 38-101. | Act, how cited. |
| 38-105. | Definitions, where found. |
| 38-117.01. | Low-income individual, defined. |
| 38-117.02. | Military families, defined. |
| 38-118.01. | Military spouse, defined. |
| 38-120.03. | Young worker, defined. |
| 38-129.01. | Temporary credential to military spouse; issuance; period valid. |
| 38-151. | Credentialing system; administrative costs; how paid; patient safety fee. |
| 38-154. | Adjustments to the cost of credentialing. |
| 38-155. | Credentialing fees; establishment and collection. |
| 38-178. | Disciplinary actions; grounds. |
| 38-180. | Disciplinary actions; evidence of discipline by another state or jurisdiction. |
| 38-1,143. | Telehealth; provider-patient relationship; prescription authority; applicability of section. |
| 38-1,144. | Schedule II controlled substance or other opiate; practitioner; duties. |
| 38-1,145. | Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties. |

38-101 Act, how cited.

Sections 38-101 to 38-1,145 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 Dialysis Patient Care Technician Registration Act;

- (12) The Emergency Medical Services Practice Act;
- (13) The Environmental Health Specialists Practice Act;
- (14) The Funeral Directing and Embalming Practice Act;
- (15) The Genetic Counseling Practice Act;
- (16) The Hearing Instrument Specialists Practice Act;
- (17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;
- (18) The Massage Therapy Practice Act;
- (19) The Medical Nutrition Therapy Practice Act;
- (20) The Medical Radiography Practice Act;
- (21) The Medicine and Surgery Practice Act;
- (22) The Mental Health Practice Act;
- (23) The Nurse Practice Act;
- (24) The Nurse Practitioner Practice Act;
- (25) The Nursing Home Administrator Practice Act;
- (26) The Occupational Therapy Practice Act;
- (27) The Optometry Practice Act;
- (28) The Perfusion Practice Act;
- (29) The Pharmacy Practice Act;
- (30) The Physical Therapy Practice Act;
- (31) The Podiatry Practice Act;
- (32) The Psychology Practice Act;
- (33) The Respiratory Care Practice Act;
- (34) The Surgical First Assistant Practice Act;
- (35) The Veterinary Medicine and Surgery Practice Act; and
- (36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,145 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 (35) of this section, to 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; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3; Laws 2018, LB701, § 1; Laws 2019, LB29, § 1; Laws 2019, LB112, § 1; Laws 2019, LB556, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB29, section 1, with LB112, section 1, and LB556, section 1, to reflect all amendments.

Note: Changes made by LB556 became effective May 2, 2019. Changes made by LB29 became effective September 1, 2019. Changes made by LB112 became operative January 1, 2020.

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.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
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.
Genetic Counseling Practice Act, see section 38-3401.
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.
Surgical First Assistant Practice Act, see section 38-3501.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-105 Definitions, where found.

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120.03 apply.

Source: Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2; Laws 2019, LB112, § 2.
 Operative date January 1, 2020.

38-117.01 Low-income individual, defined.

Low-income individual means an individual enrolled in a state or federal public assistance program, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act, the federal Supplemental Nutrition Assistance Program, or the federal Temporary Assistance for Needy Families program, or whose household adjusted gross income is below one hundred thirty percent of the federal income poverty guideline or a higher threshold to be set by the Licensure Unit of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2019, LB112, § 3.
Operative date January 1, 2020.

Cross References

Medical Assistance Act, see section 68-901.

38-117.02 Military families, defined.

Military families means active duty service members in the armed services of the United States, military spouses, honorably discharged veterans of the armed services of the United States, spouses of such honorably discharged veterans, and unremarried surviving spouses of deceased service members of the armed services of the United States.

Source: Laws 2019, LB112, § 4.
Operative date January 1, 2020.

38-118.01 Military spouse, defined.

Military spouse means the spouse of an active duty service member in the armed forces of the United States.

Source: Laws 2017, LB88, § 30; Laws 2019, LB112, § 5.
Operative date January 1, 2020.

38-120.03 Young worker, defined.

Young worker means (1) for an initial credential under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, except for a body art license, an applicant who is between the ages of seventeen and twenty-five years or (2) for an initial credential issued under any other provision of the Uniform Credentialing Act, including a body art license, an applicant who is between the ages of eighteen and twenty-five years.

Source: Laws 2019, LB112, § 6.
Operative date January 1, 2020.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

38-129.01 Temporary credential to military spouse; issuance; period valid.

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a temporary license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

(a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;

(b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential; and

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is a resident of Nebraska, is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, and has submitted fingerprints for a criminal background check if required under section 38-131, the department shall issue a temporary credential to the applicant. The applicant shall not be required to pay any fees pursuant to the Uniform Credentialing Act for the temporary credential or the initial regular credential except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

Source: Laws 2017, LB88, § 33; Laws 2019, LB112, § 7.
Operative date January 1, 2020.

38-151 Credentialing system; administrative costs; how paid; patient safety fee.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials except as otherwise provided in section 38-155. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost

of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

(4) In addition to the fees established under section 38-155, each applicant for the initial issuance and renewal of a credential to practice as a physician or an osteopathic physician under the Medicine and Surgery Practice Act shall pay a patient safety fee of fifty dollars and to practice as a physician assistant under the Medicine and Surgery Practice Act shall pay a patient safety fee of twenty dollars, which fee shall be collected biennially with the initial or renewal fee for the credential. Revenue from such fee shall be remitted to the State Treasurer for credit to the Patient Safety Cash Fund. The patient safety fee shall terminate on January 1, 2026, unless extended by the Legislature.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1; Laws 2019, LB25, § 1; Laws 2019, LB112, § 8.

Operative date January 1, 2020.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB25, section 1, with LB112, section 8, to reflect all amendments.

Cross References

Fees of state boards, see sections 33-151 and 33-152.

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

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-154 Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

(1) Revenue from sources that include, but are not limited to:

(a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;

(b) Certification and verification of credentials;

(c) Administrative fees;

(d) Reinstatement fees;

(e) General Funds and federal funds;

(f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;

(g) Gifts; and

(h) Grants;

(2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128; and

(3) Costs associated with subsection (3) of section 38-155.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54; Laws 2019, LB112, § 9.
Operative date January 1, 2020.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) Subject to subsection (3) of this section, the department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

(a) Initial credentials, which include, but are not limited to:

(i) Licensure, certification, or registration;

(ii) Add-on or specialty credentials;

(iii) Temporary, provisional, or training credentials; and

(iv) Supervisory or collaborative relationship credentials;

(b) Applications to renew licenses, certifications, and registrations;

(c) Approval of continuing education courses and other methods of continuing competency; and

(d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

(3) All fees for initial credentials under the Uniform Credentialing Act for low-income individuals, military families, and young workers shall be waived

except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1; Laws 2019, LB112, § 10.

Operative date January 1, 2020.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Performing or offering to perform scleral tattooing as defined in section 38-10,172 by a person not credentialed to do so;

(12) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(13) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;

(14) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(15) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(16) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(17) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(18) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(19) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(20) Failure to maintain the requirements necessary to obtain a credential;

(21) Violation of an order issued by the department;

(22) Violation of an assurance of compliance entered into under section 38-1,108;

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179; or

(25) Violation of the Automated Medication Systems Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2; Laws 2019, LB449, § 1.

Effective date September 1, 2019.

Cross References

Automated Medication Systems Act, see section 71-2444.

Uniform Controlled Substances Act, see section 28-401.01.

Uniform Deceptive Trade Practices Act, see section 87-306.

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (12) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80; Laws 2019, LB449, § 2.

Effective date September 1, 2019.

38-1,143 Telehealth; provider-patient relationship; prescription authority; applicability of section.

(1) Except as otherwise provided in subsection (4) of this section, any credential holder under the Uniform Credentialing Act may establish a provider-patient relationship through telehealth.

(2) Any credential holder under the Uniform Credentialing Act who is providing a telehealth service to a patient may prescribe the patient a drug if the credential holder is authorized to prescribe under state and federal law.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

(4) This section does not apply to a credential holder under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Dialysis Patient Care Technician Registration Act, the Environmental Health Specialists Practice Act, the Funeral Directing and Embalming Practice Act, the Massage Therapy Practice Act, the Medical Radiography Practice Act, the Nursing Home Administrator Practice Act, the Perfusion Practice Act, the Surgical First Assistant Practice Act, the Veterinary Medicine and Surgery Practice Act, or the Water Well Standards and Contractors' Practice Act.

Source: Laws 2019, LB29, § 2.

Effective date September 1, 2019.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

Dialysis Patient Care Technician Registration Act, see section 38-3701.

Environmental Health Specialists Practice Act, see section 38-1301.

Funeral Directing and Embalming Practice Act, see section 38-1401.

Massage Therapy Practice Act, see section 38-1701.

Medical Radiography Practice Act, see section 38-1901.

Nursing Home Administrator Practice Act, see section 38-2401.

Perfusion Practice Act, see section 38-2701.

Surgical First Assistant Practice Act, see section 38-3501.

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

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

38-1,144 Schedule II controlled substance or other opiate; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate as defined in section 28-401 not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain, a practitioner involved in the course of treatment as the primary prescribing practitioner or as a member of the patient's care team who is under the direct supervision or in consultation with the primary prescribing practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is younger than eighteen years of age and is not emancipated, unless the discussion has already occurred with another member of the patient's care team within the previous sixty days:

(a) The risks of addiction and overdose associated with the controlled substance or opiate being prescribed, including, but not limited to:

(i) Controlled substances and opiates are highly addictive even when taken as prescribed;

(ii) There is a risk of developing a physical or psychological dependence on the controlled substance or opiate; and

(iii) Taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines, or alcohol with controlled substances or opiates, can result in fatal respiratory depression;

(b) The reasons why the prescription is necessary; and

(c) Alternative treatments that may be available.

(3) This section does not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care.

(4) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 3; R.S.Supp.,2018, § 28-473; Laws 2019, LB556, § 2.

Effective date May 2, 2019.

38-1,145 Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) The Legislature finds that:

(a) In most cases, acute pain can be treated effectively with nonopiate or nonpharmacological options;

(b) With a more severe or acute injury, short-term use of opiates may be appropriate;

(c) Initial opiate prescriptions for children should not exceed seven days for most situations, and two or three days of opiates will often be sufficient;

(d) If a patient needs medication beyond three days, the prescriber should reevaluate the patient prior to issuing another prescription for opiates; and

(e) Physical dependence on opiates can occur within only a few weeks of continuous use, so great caution needs to be exercised during this critical recovery period.

(3) A practitioner who is prescribing an opiate as defined in section 28-401 for a patient younger than eighteen years of age for outpatient use for an acute condition shall not prescribe more than a seven-day supply except as otherwise provided in subsection (4) of this section and, if the practitioner has not previously prescribed an opiate for such patient, shall discuss with a parent or guardian of such patient, or with the patient if the patient is an emancipated minor, the risks associated with use of opiates and the reasons why the prescription is necessary.

(4) If, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat such patient's medical condition or is necessary for the treatment of pain associated with a cancer diagnosis or for palliative care, the practitioner may issue a prescription for the quantity needed to treat such patient's medical condition or pain. The practitioner shall document the medical condition triggering the prescription of more than a seven-day supply of an opiate in the patient's medical record and shall indicate that a nonopiate alternative was not appropriate to address the medical condition.

(5) This section does not apply to controlled substances prescribed pursuant to section 28-412.

(6) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 4; R.S.Supp.,2018, § 28-474; Laws 2019, LB556, § 3.
Effective date May 2, 2019.

ARTICLE 10

COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Section

38-1001. Act, how cited.

38-10,172. Scleral tattooing; prohibited acts; civil penalty.

38-1001 Act, how cited.

Sections 38-1001 to 38-10,172 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263; Laws 2016, LB898, § 1; Laws 2018, LB731, § 3; Laws 2019, LB449, § 3.
Effective date September 1, 2019.

38-10,172 Scleral tattooing; prohibited acts; civil penalty.

(1) For purposes of this section, scleral tattooing means the practice of using needles, scalpels, or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under:

- (a) The fornix conjunctiva;
- (b) The bulbar conjunctiva;
- (c) The ocular conjunctiva; or
- (d) Another ocular surface.

(2) Except as provided in subsection (3) of this section, a person shall not perform or offer to perform scleral tattooing on another person.

(3) This section does not apply to a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act when the licensee is performing a procedure within the scope of her or his practice.

(4) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who performs scleral tattooing without being authorized to do so under the Uniform Credentialing Act shall be subject to a civil penalty not to exceed ten thousand dollars for each violation. If a violation continues after notification, this constitutes a separate offense. 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. 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 2019, LB449, § 4.
Effective date September 1, 2019.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section
38-1220. Act; exemptions.

38-1220 Act; exemptions.

The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

(1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;

(2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;

(3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;

(4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;

(5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, licensed practical nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;

(6) Persons authorized to perform out-of-hospital emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of (a) a licensed out-of-hospital emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency or (b) an organization accredited by the Commission on Accreditation of Allied Health Education Programs for the level of training the student is completing.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504; Laws 2019, LB135, § 1.
Effective date September 1, 2019.

ARTICLE 17

MESSAGE THERAPY PRACTICE ACT

Section

- 38-1701. Act, how cited.
 38-1702. Definitions, where found.
 38-1707. Message therapy establishment, defined.
 38-1707.01. Mobile massage therapy establishment, defined.
 38-1715. Transferred to section 38-1725.
 38-1716. Message therapy establishment; license required.
 38-1717. Mobile massage therapy establishment; applicant; requirements.
 38-1718. Mobile massage therapy establishment; application; floor plan or blueprint.
 38-1719. Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.
 38-1720. Mobile massage therapy establishment; operation; requirements.
 38-1721. Mobile massage therapy establishment license; renewal; procedure; insurance.
 38-1722. Mobile massage therapy establishment license revoked or expired; not reinstated.
 38-1723. Mobile massage therapy establishment license; change of ownership or mobile unit; effect.
 38-1724. Mobile massage therapy establishment; owner; duties.
 38-1725. Rules and regulations.

38-1701 Act, how cited.

Sections 38-1701 to 38-1725 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608; Laws 2019, LB244, § 1.
 Effective date May 30, 2019.

38-1702 Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707.01 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp., 1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609; Laws 2019, LB244, § 2.
 Effective date September 1, 2019.

38-1707 Message therapy establishment, defined.

Message therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Message therapy establishment includes a mobile massage therapy establishment.

Source: Laws 2007, LB463, § 614; Laws 2019, LB244, § 3.
 Effective date May 30, 2019.

38-1707.01 Mobile massage therapy establishment, defined.

Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a

mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Source: Laws 2019, LB244, § 4.
Effective date May 30, 2019.

38-1715 Transferred to section 38-1725.

38-1716 Massage therapy establishment; license required.

No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Source: Laws 2019, LB244, § 5.
Effective date May 30, 2019.

38-1717 Mobile massage therapy establishment; applicant; requirements.

In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

- (1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;
- (2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;
- (3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;
- (4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;
- (5) The entrance into the proposed establishment used by the general public provides safe access by the public;
- (6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and
- (7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2019, LB244, § 6.
Effective date May 30, 2019.

38-1718 Mobile massage therapy establishment; application; floor plan or blueprint.

Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of

the proposed establishment sufficient to demonstrate compliance with the requirements of section 38-1717.

Source: Laws 2019, LB244, § 7.

Effective date May 30, 2019.

38-1719 Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.

Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An establishment which passes the inspection shall be issued a permanent license. An establishment which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2019, LB244, § 8.

Effective date May 30, 2019.

38-1720 Mobile massage therapy establishment; operation; requirements.

In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

(1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;

(3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;

(4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;

(5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;

(6) The establishment shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate an establishment;

(b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;

(8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2019, LB244, § 9.

Effective date May 30, 2019.

38-1721 Mobile massage therapy establishment license; renewal; procedure; insurance.

The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Source: Laws 2019, LB244, § 10.

Effective date May 30, 2019.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-1722 Mobile massage therapy establishment license revoked or expired; not reinstated.

The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 11.

Effective date May 30, 2019.

38-1723 Mobile massage therapy establishment license; change of ownership or mobile unit; effect.

Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 12.
Effective date May 30, 2019.

38-1724 Mobile massage therapy establishment; owner; duties.

The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Source: Laws 2019, LB244, § 13.
Effective date May 30, 2019.

38-1725 Rules and regulations.

The department may adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622; R.S.1943, (2016), § 38-1715; Laws 2019, LB244, § 14.
Effective date May 30, 2019.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section

38-2001. Act, how cited.

38-2063. Repealed. Laws 2019, LB29, § 5.

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; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3.
Effective date September 1, 2019.

38-2063 Repealed. Laws 2019, LB29, § 5.

ARTICLE 28

PHARMACY PRACTICE ACT

Section

38-2801. Act, how cited.

Section	
38-2802.	Definitions, where found.
38-2845.	Supervision, defined.
38-2846.01.	Validation, defined.
38-2891.01.	Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.
38-2894.	Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,107 and the Nebraska Drug Product Selection Act 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; Laws 2011, LB179, § 2; Laws 2015, LB37, § 29; Laws 2017, LB166, § 9; Laws 2017, LB481, § 1; Laws 2018, LB731, § 67; Laws 2019, LB74, § 1. Effective date September 1, 2019.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

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; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30; Laws 2017, LB166, § 10; Laws 2017, LB481, § 2; Laws 2018, LB731, § 68; Laws 2019, LB74, § 2. Effective date September 1, 2019.

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions subject to (1) verification by such pharmacist or (2) validation by a certified pharmacy technician subject to section 38-2891.01. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1; Laws 2019, LB74, § 3. Effective date September 1, 2019.

38-2846.01 Validation, defined.

Validation means the action of a certified pharmacy technician checking the accuracy and completeness of the acts, tasks, or functions undertaken by another certified pharmacy technician as provided in section 38-2891.01.

Source: Laws 2019, LB74, § 4. Effective date September 1, 2019.

38-2891.01 Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.

(1) A pharmacy technician may validate the acts, tasks, and functions of another pharmacy technician only if:

(a) Both pharmacy technicians are certified by a state or national certifying body which is approved by the board;

(b) Both certified pharmacy technicians are working within the confines of a hospital preparing medications for administration in the hospital;

(c) Using bar code technology, radio frequency identification technology, or similar technology to validate the accuracy of medication;

(d) Validating medication that is prepackaged by the manufacturer or pre-packaged and verified by a pharmacist; and

(e) Acting in accordance with policies and procedures applicable in the hospital established by the pharmacist in charge.

(2) The pharmacist in charge in a hospital shall establish policies and procedures for validation of medication by two or more certified pharmacy technicians before such validation process is implemented in the hospital.

Source: Laws 2019, LB74, § 5.

Effective date September 1, 2019.

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 (18) and (20) through (25) 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; Laws 2019, LB449, § 5.

Effective date September 1, 2019.

CHAPTER 39

HIGHWAYS AND BRIDGES

Article.

8. Bridges.
 - (b) Contracts for Construction and Repair of Bridges. 39-810.
 - (g) State Aid Bridges. 39-847.
13. State Highways.
 - (e) Land Acquisition. 39-1320.
 - (h) Contracts. 39-1349 to 39-1354.
15. County Roads. Organization and Administration.
 - (b) County Highway Superintendent. 39-1508, 39-1512.
21. Functional Classification. 39-2109 to 39-2122.
22. Nebraska Highway Bonds. 39-2215.
25. Distribution to Political Subdivisions.
 - (a) Roads. 39-2502, 39-2510.
 - (b) Streets. 39-2512, 39-2520.
28. Transportation Innovation Act. 39-2802 to 39-2824.

ARTICLE 8

BRIDGES

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

Section

39-810. Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(g) STATE AID BRIDGES

39-847. State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or

construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1; Laws 2017, LB86, § 1; Laws 2019, LB82, § 1. Effective date March 8, 2019.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

(g) STATE AID BRIDGES

39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish fifty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

Source: Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB339, § 114; Laws 2019, LB82, § 2.
Effective date March 8, 2019.

ARTICLE 13

STATE HIGHWAYS

(e) LAND ACQUISITION

Section

39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(h) CONTRACTS

39-1349. Construction contracts; letting; procedure; interest on retained payments; exception; predetermined minimum wages; powers of department.

39-1351. Construction contracts; bidders; qualifications; evaluation by department; powers of department.

39-1352. Construction contracts; bidders; statement of qualifications.

39-1353. Construction contracts; request authorization to bid; issuance to certain bidders.

39-1354. Construction contracts; plans; reproduction; how obtained.

(e) LAND ACQUISITION

39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and 39-1393, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan or program as required by section 39-2115 or an annual plan or program under section 39-2118. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(c).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1; Laws 2016, LB1038, § 10; Laws 2017, LB271, § 7; Laws 2017, LB339, § 125; Laws 2019, LB82, § 3.
Effective date March 8, 2019.

Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.

Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

(h) CONTRACTS

39-1349 Construction contracts; letting; procedure; interest on retained payments; exception; predetermined minimum wages; powers of department.

(1) Except as provided in subsections (5) and (6) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department.

(2) Except as provided in subsection (3) of this section, if the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(3) Subsection (2) of this section shall not apply to contracts which provide for payment pursuant to a set schedule over a period of time that extends beyond the completion of construction.

(4) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(5) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

(6) The department, in its sole discretion, may permit a federal agency to let contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances and may permit such

federal agency to perform any and all other aspects of the project to which such contract relates, including, but not limited to, preliminary engineering, environmental clearance, final design, and construction engineering, when the department determines that it is in the public interest to do so. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB312, § 2; Laws 2019, LB616, § 1.
Effective date September 1, 2019.

39-1351 Construction contracts; bidders; qualifications; evaluation by department; powers of department.

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification. Such application shall be made not later than five days before the letting of the contract unless fewer than five days is specified by the department. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, bonding capacity as determined by a bonding agency licensed to do business in the State of Nebraska or other sufficient financial showing deemed satisfactory by the department, and performance record. In determining the qualification of an applicant to bid on any particular contract, the department shall consider the resources available for the particular contract contemplated.

(2) The department may, in its sole discretion, grant an exemption from all prequalification requirements for (a) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if the estimate of the department for such work is one hundred thousand dollars or less or (b) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if such work is of an emergency nature.

Source: Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6; Laws 2015, LB312, § 4; Laws 2019, LB117, § 1.
Effective date September 1, 2019.

39-1352 Construction contracts; bidders; statement of qualifications.

(1) Except as provided in subsection (2) of this section, any person proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall submit to the department, at such times as it may require, a statement showing such person's qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The statement shall be confidential and only for the use of the department.

(2) Subsection (1) of this section shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB312, § 5; Laws 2019, LB117, § 2.
Effective date September 1, 2019.

39-1353 Construction contracts; request authorization to bid; issuance to certain bidders.

(1) Any person desiring to bid on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall request an authorization to bid from the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such authorization shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6; Laws 2017, LB339, § 131; Laws 2019, LB117, § 3.
Effective date September 1, 2019.

39-1354 Construction contracts; plans; reproduction; how obtained.

The department, in its discretion, may provide paper or electronic reproductions of the plans prepared by the department for any contract to be let for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, to any person desiring such paper or electronic reproductions. Such person shall pay to the department a reasonable sum, to be fixed by the department in an amount estimated to cover the actual cost of preparing such paper or electronic reproductions.

Source: Laws 1955, c. 148, § 54, p. 441; Laws 2019, LB117, § 4.
Effective date September 1, 2019.

ARTICLE 15

COUNTY ROADS. ORGANIZATION AND ADMINISTRATION

(b) COUNTY HIGHWAY SUPERINTENDENT

Section

39-1508. Highway superintendent; duties.

39-1512. Repealed. Laws 2019, LB414, § 3.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1508 Highway superintendent; duties.

It shall be the duty of the county highway superintendent to:

(1) Annually submit to the county board a proposed schedule of construction, repair, maintenance, and supervision of county roads and bridges in conjunction with sections 39-2115, 39-2119, and 39-2120;

(2) Annually file with the county clerk a revised and current map of the county roads clearly distinguishing the primary and secondary roads, indicating the past year's improvements thereon, and showing the number of miles of roads established during the year and the location thereof; and

(3) Undertake the projects contained in subdivision (1) of this section, and when requested by the county board report the projects completed, the projects in construction, the equipment and material purchased, the amounts expended upon roads and bridges, and the sum remaining to be expended, except that deviations from the adopted program may be authorized by the unanimous vote of the county board in case of an emergency.

Source: Laws 1957, c. 155, art. II, § 8, p. 516; Laws 2019, LB414, § 1.
Effective date September 1, 2019.

39-1512 Repealed. Laws 2019, LB414, § 3.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

Section

- 39-2109. Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; duties.
- 39-2113. Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision; additional programs.
- 39-2114. Counties and municipalities; contract between themselves.
- 39-2115. Six-year plan or program; basis; certification form; failure to file; penalty; funds placed in escrow.
- 39-2116. Repealed. Laws 2019, LB82, § 18.
- 39-2117. Repealed. Laws 2019, LB82, § 18.
- 39-2118. Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.
- 39-2119. Counties and municipalities; plan or program for specific improvements; hearing; duty to certify compliance; penalty; funds placed in escrow.
- 39-2119.01. Repealed. Laws 2019, LB82, § 18.
- 39-2120. Certification form for annual filing; Board of Public Roads Classifications and Standards; develop; contents.
- 39-2121. Department of Transportation; counties; municipalities; certification form; filing; penalty; when imposed; appeal.
- 39-2122. Board of Public Roads Classifications and Standards; powers.

39-2109 Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; duties.

The Board of Public Roads Classifications and Standards shall develop and adopt the specific criteria for each functional classification set forth in sections 39-2103 and 39-2104, which criteria shall be consistent with the general criteria set forth in those sections. No such criteria shall be adopted until after public hearings have been held thereon at such times and places as to assure interested parties throughout the state an opportunity to be heard thereon. Following their adoption, the board shall provide an electronic copy of such criteria to the Secretary of State and the Clerk of the Legislature. The board shall also provide an electronic notification of such criteria to the appropriate

representative of each county and each incorporated municipality and to the Director-State Engineer.

Source: Laws 1969, c. 312, § 9, p. 1123; Laws 1980, LB 873, § 3; Laws 1983, LB 10, § 5; Laws 2008, LB1068, § 6; Laws 2019, LB82, § 4.

Effective date March 8, 2019.

39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision; additional programs.

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform

to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

(7) In cooperation with the Department of Transportation, counties, and municipalities, the board is authorized to develop, support, approve, and implement programs and project strategies that provide additional flexibility in the design and maintenance standards. Once a program is established, the board shall allow project preapproval for all projects that conform to the agreed-upon program. The programs shall be set out in memorandums of understanding or guidance documents and may include, but are not limited to, the following:

(a) Practical design, flexible design, or similar programs or strategies intended to focus funding on the primary problem or need in constructing projects that will not meet all the standards but provide substantial overall benefit at a reasonable cost to the public;

(b) Asset preservation or preventative maintenance programs and strategies that focus on extending the life of assets such as, but not limited to, pavement and bridges that may incorporate benefit cost, cost effectiveness, best value, or lifecycle analysis in determining the project approach and overall benefit to the public; and

(c) Context sensitive design programs or similar programs that consider the established needs and values of a county, municipality, community, or other connected group to enable projects that balance safety while making needed improvements in a manner that fits the surroundings and provides overall benefit to the public.

Source: Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9; Laws 2017, LB339, § 152; Laws 2019, LB82, § 5.

Effective date March 8, 2019.

39-2114 Counties and municipalities; contract between themselves.

In order to achieve the efficiencies and economics resulting from unified operations, the Legislature encourages the counties and municipalities to make use of the Interlocal Cooperation Act or the Joint Public Agency Act by contracting between and among themselves for cooperative programs of administering all phases of their road and street programs.

Source: Laws 1969, c. 312, § 14, p. 1124; Laws 1999, LB 87, § 72; Laws 2019, LB82, § 6.

Effective date March 8, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

39-2115 Six-year plan or program; basis; certification form; failure to file; penalty; funds placed in escrow.

The Department of Transportation and each county and municipality shall develop, adopt, maintain as a public record, and annually update a long-range, six-year plan or program of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. The department and each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality, or the department, shall fail to file its certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153; Laws 2019, LB82, § 7.

Effective date March 8, 2019.

39-2116 Repealed. Laws 2019, LB82, § 18.

39-2117 Repealed. Laws 2019, LB82, § 18.

39-2118 Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.

The Department of Transportation shall annually develop, adopt, and maintain as a public record a plan or program for specific highway improvements for the current year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The department shall annually certify compliance with the requirements of this

section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155; Laws 2019, LB82, § 8.

Effective date March 8, 2019.

39-2119 Counties and municipalities; plan or program for specific improvements; hearing; duty to certify compliance; penalty; funds placed in escrow.

Each county and municipality shall annually develop, adopt, and maintain as a public record, a one-year plan or program for specific highway, road, or street improvements for the current year. No such plan or program, or revision to such plan or program, shall be adopted until after a public hearing thereon and its approval by the governing body. Each county and municipality shall schedule and hold the public hearing each year, and such hearing may be held prior to or in conjunction with that entity's annual public hearing on its proposed budget statement in any year such budget statement hearing is held pursuant to section 13-506. Each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB277, § 3; Laws 2019, LB82, § 9.

Effective date March 8, 2019.

39-2119.01 Repealed. Laws 2019, LB82, § 18.

39-2120 Certification form for annual filing; Board of Public Roads Classifications and Standards; develop; contents.

The Board of Public Roads Classifications and Standards shall develop and schedule for implementation a certification form for annual filing pursuant to section 39-2121 by the Department of Transportation and each county and municipality. The certification form shall include:

(1) A statement from the department and each county or municipality that it has developed, adopted, and included in its public records the plans, programs, or standards required by sections 39-2115 to 39-2119;

(2) A statement that the department and each county or municipality:

(a) Meets the plans, programs, or standards of design, construction, and maintenance for its highways, roads, or streets;

(b) Expends all tax revenue for highway, road, or street purposes in accordance with approved plans, programs, or standards, including county and municipal tax revenue as well as highway-user revenue allocations;

(c) Uses a system of revenue and cost accounting which clearly includes a comparison of receipts and expenditures for approved budgets, plans, programs, and standards;

(d) Uses a system of budgeting which reflects uses and sources of funds in terms of plans, programs, or standards and accomplishments;

(e) Uses an accounting system including an inventory of machinery, equipment, and supplies; and

(f) Uses an accounting system that tracks equipment operation costs; and

(3) The information required under subsection (2) of section 39-2510 or subsection (2) of section 39-2520, when applicable.

The certification by the department shall be signed by the Director-State Engineer. The certification by each county and municipality shall be signed by the board chairperson or mayor and shall include a copy of the resolution or ordinance of the governing body of the county or municipality authorizing the signing of the certification form.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156; Laws 2019, LB82, § 10.
Effective date March 8, 2019.

39-2121 Department of Transportation; counties; municipalities; certification form; filing; penalty; when imposed; appeal.

(1) The certification form required to be filed with the Board of Public Roads Classifications and Standards pursuant to section 39-2120 shall be filed annually by the Department of Transportation by July 31 and by each county and municipality by October 31.

(2) If any county or municipality or the department fails to file such certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

(3) If any county or municipality either (a) files a materially false certification form or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false certification form and the penalty for constructing a highway, road, or street

below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB339, § 157; Laws 2019, LB82, § 11.
Effective date March 8, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

39-2122 Board of Public Roads Classifications and Standards; powers.

The Board of Public Roads Classifications and Standards may make occasional random checks of county and municipal construction projects to determine that the standards of design and construction developed under section 39-2113 are being met.

Source: Laws 1969, c. 312, § 22, p. 1128; Laws 1971, LB 100, § 11; Laws 2019, LB82, § 12.
Effective date March 8, 2019.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section

39-2215. Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

39-2215 Highway Trust Fund; created; allocation; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may

be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-739 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602,

§ 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3; Laws 2017, LB339, § 159; Laws 2019, LB512, § 2.
Operative date May 31, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 25

DISTRIBUTION TO POLITICAL SUBDIVISIONS

(a) ROADS

Section

39-2502. County highway superintendent, defined; duties; incentive payment.

39-2510. Funds received; use; restriction; exception.

(b) STREETS

39-2512. City street superintendent, defined; duties; incentive payment.

39-2520. Funds received; use; restriction; exception.

(a) ROADS

39-2502 County highway superintendent, defined; duties; incentive payment.

An incentive payment shall be made to each county having in its employ a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2510, county highway superintendent means a person who actually performs the following duties:

(1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;

(2) Developing an annual program for design, construction, and maintenance;

(3) Developing an annual budget based on programmed projects and activities;

(4) Submitting such plans, programs, and budgets to the local governing body for approval; and

(5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7; Laws 2019, LB82, § 13.

Effective date March 8, 2019.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2510 Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a county or municipal county that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The county or municipal county shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The county or municipal county shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

Source: Laws 1969, c. 315, § 10, p. 1138; Laws 1997, LB 271, § 15; Laws 2006, LB 904, § 2; Laws 2019, LB82, § 14; Laws 2019, LB472, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB82, section 14, with LB472, section 8, to reflect all amendments.

Note: Changes made by LB82 became effective March 8, 2019. Changes made by LB472 became effective September 1, 2019.

(b) STREETS**39-2512 City street superintendent, defined; duties; incentive payment.**

An incentive payment shall be made to each municipality or municipal county having in its employ a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2520, city street superintendent means a person who actually performs the following duties:

(1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;

(2) Developing an annual program for design, construction, and maintenance;

(3) Developing an annual budget based on programmed projects and activities;

(4) Submitting such plans, programs, and budgets to the local governing body for approval; and

(5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8; Laws 2019, LB82, § 15.
Effective date March 8, 2019.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2520 Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a municipality that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The municipality shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The municipality shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

Source: Laws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3; Laws 2019, LB82, § 16; Laws 2019, LB472, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB82, section 16, with LB472, section 9, to reflect all amendments.

Note: Changes made by LB82 became effective March 8, 2019. Changes made by LB472 became effective September 1, 2019.

ARTICLE 28

TRANSPORTATION INNOVATION ACT

Section

- 39-2802. Terms, defined.
- 39-2808. Purpose of sections.
- 39-2809. Design-build contract; construction manager-general contract; authorized.
- 39-2810. Contracting agency; hire engineering or architectural consultant.
- 39-2811. Guidelines; contents.
- 39-2813. Request for qualifications for design-build proposals; publication; short list created.
- 39-2814. Request for proposals for design-build contract; elements.
- 39-2815. Stipend.
- 39-2816. Submission of proposals; sealed; rank of design-builders; negotiation of contract.
- 39-2817. Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.
- 39-2818. Request for proposals for construction manager-general contractor contract; elements.
- 39-2819. Submission of proposals; sealed; rank of construction managers; negotiation of contract.
- 39-2820. Contracting agency; cost estimate; conduct contract negotiations.
- 39-2821. Contracts; changes authorized.
- 39-2822. Department; authority for political subdivision projects.
- 39-2823. Insurance.
- 39-2824. Rules and regulations.

39-2802 Terms, defined.

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to a contracting agency's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between a contracting agency and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the contracting agency, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Contracting agency means the department, an eligible county, a city of the metropolitan class, or a city of the primary class using the powers provided under the Transportation Innovation Act;

(7) Department means the Department of Transportation;

(8) Design-build contract means a contract between a contracting agency and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(9) Design-builder means the legal entity which proposes to enter into a design-build contract;

(10) Eligible county means (a) a county or (b) a joint entity created by agreement under section 13-804 if a county is a party to the agreement;

(11) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;

(12) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(13) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, 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, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(14) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(15) Qualification-based selection process means a process of selecting a construction manager based on qualifications;

(16) Request for proposals means the documentation by which a contracting agency solicits proposals; and

(17) Request for qualifications means the documentation or publication by which a contracting agency solicits qualifications.

Source: Laws 2016, LB960, § 2; Laws 2017, LB339, § 173; Laws 2019, LB583, § 2.

Effective date September 1, 2019.

39-2808 Purpose of sections.

The purpose of sections 39-2808 to 39-2824 is to provide a contracting agency alternative methods of contracting for public projects. The alternative methods of contracting shall be available to a contracting agency for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Transportation Innovation Act shall govern the design-build and construction manager-general contractor procurement process.

Source: Laws 2016, LB960, § 8; Laws 2019, LB583, § 3.

Effective date September 1, 2019.

39-2809 Design-build contract; construction manager-general contract; authorized.

A contracting agency, in accordance with sections 39-2808 to 39-2824, may solicit and execute a design-build contract or a construction manager-general

contractor contract for a public project, other than a project that is primarily resurfacing, rehabilitation, or restoration.

Source: Laws 2016, LB960, § 9; Laws 2019, LB583, § 4.
Effective date September 1, 2019.

39-2810 Contracting agency; hire engineering or architectural consultant.

A contracting agency may hire an engineering or architectural consultant to assist the contracting agency with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the contracting agency to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2016, LB960, § 10; Laws 2019, LB583, § 5.
Effective date September 1, 2019.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

39-2811 Guidelines; contents.

The department shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. If an eligible county, a city of the metropolitan class, or a city of the primary class intends to proceed with a design-build contract or a construction manager-general contractor contract, the eligible county, city of the metropolitan class, or city of the primary class may adopt the guidelines published by the department. The department's guidelines shall include the following:

- (1) Preparation and content of requests for qualifications;
- (2) Preparation and content of requests for proposals;
- (3) Qualification and short-listing of design-builders and construction managers. The guidelines shall provide that the contracting agency will evaluate prospective design-builders and construction managers based on the information submitted to the contracting agency in response to a request for qualifications and will select a short list of design-builders or construction managers who shall be considered qualified and eligible to respond to the request for proposals;
- (4) Preparation and submittal of proposals;
- (5) Procedures and standards for evaluating proposals;
- (6) Procedures for negotiations between the contracting agency and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract to determine adherence to the project performance criteria.

Source: Laws 2016, LB960, § 11; Laws 2019, LB583, § 6.
Effective date September 1, 2019.

39-2813 Request for qualifications for design-build proposals; publication; short list created.

(1) A contracting agency shall prepare a request for qualifications for design-build proposals and shall prequalify design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder to respond. The request for qualifications shall identify the maximum number of design-builders the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the contracting agency under section 39-2810 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder upon request.

(4) The contracting agency shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two prospective design-builders, except that if only one design-builder has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders placed on the short list.

Source: Laws 2016, LB960, § 13; Laws 2019, LB583, § 7.
Effective date September 1, 2019.

39-2814 Request for proposals for design-build contract; elements.

A contracting agency shall prepare a request for proposals for each design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) A statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. The criteria shall include, but are not limited to, the cost of the work, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. The relative weight to apply to any criterion shall be at the discretion of the contracting agency based on each project, except that in all cases, the cost of the work shall be given a relative weight of at least fifty percent;

(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 and shall include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) At the time of the design-build proposal, the design-builder must furnish to the contracting agency a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the project must 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 contracting agency;

(b) At the time of the design-build proposal, the design-builder must furnish to the contracting agency a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder may not be removed by the design-builder prior to completion of the project without the written consent of the contracting agency;

(c) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska must (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 in the amount required by the contracting agency; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder must conform to the Engineers and Architects Regulation Act;

(11) The amount and terms of the stipend required pursuant to section 39-2815; and

(12) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 14; Laws 2019, LB583, § 8.
Effective date September 1, 2019.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-2815 Stipend.

The contracting agency shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the contracting agency ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the contracting agency as disclosed in the request for proposals.

Source: Laws 2016, LB960, § 15; Laws 2019, LB583, § 9.
Effective date September 1, 2019.

39-2816 Submission of proposals; sealed; rank of design-builders; negotiation of contract.

(1) Design-builders shall submit proposals as required by the request for proposals. A contracting agency may meet with individual design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the contracting agency, it may be incorporated as part of the proposal by the design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders or members of the public from the time the proposals are submitted until such proposals are opened by the contracting agency.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency other than any stipend for design-builders who have submitted responsive proposals. The contracting agency may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

(4) The contracting agency shall rank the design-builders in order of best value pursuant to the criteria in the request for proposals. The contracting agency may meet with design-builders prior to ranking.

(5) The contracting agency may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the contracting agency and may enter into a design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the contracting agency may terminate negotiations with that design-builder. The contracting agency may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the contracting agency may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract with any of the ranked design-builders, the contracting agency may either

revise the request for proposals and solicit new proposals or cancel the design-build process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 16; Laws 2019, LB583, § 10.
Effective date September 1, 2019.

39-2817 Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 39-2818 to 39-2820.

(2) A contracting agency shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The contracting agency shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2016, LB960, § 17; Laws 2019, LB583, § 11.
Effective date September 1, 2019.

39-2818 Request for proposals for construction manager-general contractor contract; elements.

A contracting agency shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(4) General information about the project which will assist the contracting agency 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;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the contracting agency. In no case shall the contracting agency allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 18; Laws 2019, LB583, § 12.
Effective date September 1, 2019.

39-2819 Submission of proposals; sealed; rank of construction managers; negotiation of contract.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency. The contracting agency may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The contracting agency shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The contracting agency may meet with construction managers prior to the ranking.

(5) The contracting agency may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the contracting agency may terminate negotiations with that construction manager. The contracting agency may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the contracting agency may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 19; Laws 2019, LB583, § 13.
Effective date September 1, 2019.

39-2820 Contracting agency; cost estimate; conduct contract negotiations.

(1) Before the construction manager begins any construction services, a contracting agency shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the contracting agency are unable to negotiate a contract, the contracting agency may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the contracting agency shall be eligible to compete in the other contract procurement processes.

Source: Laws 2016, LB960, § 20; Laws 2019, LB583, § 14.
Effective date September 1, 2019.

39-2821 Contracts; changes authorized.

A design-build contract and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the contracting agency in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2016, LB960, § 21; Laws 2019, LB583, § 15.
Effective date September 1, 2019.

39-2822 Department; authority for political subdivision projects.

The department may enter into agreements under sections 39-2808 to 39-2824 to let, design, and construct projects for political subdivisions when any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder or construction manager. The provisions of the Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 22; Laws 2019, LB583, § 16.
Effective date September 1, 2019.

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

39-2823 Insurance.

Nothing in sections 39-2808 to 39-2824 shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2016, LB960, § 23; Laws 2019, LB583, § 17.
Effective date September 1, 2019.

39-2824 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Transportation Innovation Act. An eligible county, a city of the metropolitan

class, or a city of the primary class may adopt a resolution or an ordinance establishing rules to carry out the act.

Source: Laws 2016, LB960, § 24; Laws 2019, LB583, § 18.
Effective date September 1, 2019.

CHAPTER 42

HOUSEHOLDS AND FAMILIES

Article.

3. Divorce, Alimony, and Child Support.
 - (d) Domestic Relations Actions. 42-377.
9. Domestic Violence.
 - (a) Protection from Domestic Abuse Act. 42-924 to 42-926.

ARTICLE 3

DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section

42-377. Legitimacy of children.

(d) DOMESTIC RELATIONS ACTIONS

42-377 Legitimacy of children.

Children born to the parties, or to either spouse, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Source: Laws 1972, LB 820, § 31; Laws 1997, LB 229, § 21; Laws 2019, LB427, § 1.

Effective date September 1, 2019.

ARTICLE 9

DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

Section

- 42-924. Protection order; when authorized; term; renewal; violation; penalty; construction of sections.
- 42-924.02. Protection order; forms provided; State Court Administrator; duties.
- 42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.
- 42-926. Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-924 Protection order; when authorized; term; renewal; violation; penalty; construction of sections.

(1)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

(i) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(ii) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(iii) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(iv) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(v) Ordering the respondent to stay away from any place specified by the court;

(vi) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(vii) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or

(viii) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(b) The petition for a protection order shall state the events and dates or approximate dates of acts constituting the alleged domestic abuse, including the most recent and most severe incident or incidents.

(c) The protection order shall specify to whom relief under this section was granted.

(2) Petitions for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(b)(i) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed any time within forty-five days before the expiration of the previous protection order, including the date the order expires.

(ii) A protection order may be renewed on the basis of the petitioner's affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal if:

(A) The petitioner seeks no modification of the order; and

(B)(I) The respondent has been properly served with notice of the petition for renewal and notice of hearing and fails to appear at the hearing; or

(II) The respondent indicates that he or she does not contest the renewal.

(iii) Such renewed order shall specify that it is effective for a period of one year to commence on the first calendar day following the expiration of the previous order or on the calendar day the court grants the renewal if such day is subsequent to the first calendar day after expiration of the previous order and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person, except the petitioner, who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I

misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Source: Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17; Laws 2012, LB310, § 3; Laws 2017, LB289, § 14; Laws 2019, LB532, § 3.

Operative date January 1, 2020.

42-924.02 Protection order; forms provided; State Court Administrator; duties.

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instructions for completion to be used by a petitioner. Affidavit forms shall request all relevant information, including, but not limited to: A description of the most recent incident that was the basis for the application for a protection order and the date or approximate date of the incident and, if there was more than one incident, the most severe incident and the date or approximate date of such incident. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard petition and affidavit forms provided for in this section as well as the standard temporary ex parte and final protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary ex parte and final protection order forms shall be the only such forms used in this state.

Source: Laws 1989, LB 330, § 13; Laws 1997, LB 393, § 2; Laws 1998, LB 218, § 22; Laws 2019, LB532, § 4.

Operative date January 1, 2020.

42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(1) An order issued under section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within ten business days after service upon him or her. Upon receipt of a timely request for a show-cause hearing, the request of the petitioner, or upon the court's own motion, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. The petition and affidavit shall be deemed to have been offered into evidence at any show-cause

hearing. The petition and affidavit shall be admitted into evidence unless specifically excluded by the court. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order.

(2) A temporary ex parte order shall be affirmed and deemed the final protection order and service of the temporary ex parte order shall be notice of the final protection order if the respondent has been properly served with the temporary ex parte order and:

(a) The respondent fails to request a show-cause hearing within ten business days after service upon him or her and no hearing was requested by the petitioner or upon the court's own motion;

(b) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and fails to appear at such hearing; or

(c) The respondent has been properly served with notice of any hearing requested by the respondent, the petitioner, or upon the court's own motion and the protection order was not dismissed at the hearing.

(3) If an order under section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. Any notice provided to the respondent shall include notification that a court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts that such other protection order is more appropriate and that the respondent shall have an opportunity to show cause as to why such protection order should not be entered. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

(4) The court may by rule or order refer or assign all matters regarding orders issued under section 42-924 to a referee for findings and recommendations.

(5) An order issued under section 42-924 shall remain in effect for the period provided in subsection (3) of section 42-924, unless dismissed or modified by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(6) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

(7) A court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault protection order if it appears from the facts in the petition, affidavit, and evidence presented at a show-cause hearing that such other protection order is more appropriate and if:

(a) The court makes specific findings that such other order is more appropriate; or

(b) The petitioner has requested the court to so treat the petition.

Source: Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36; Laws 2012, LB310, § 4; Laws 2017, LB289, § 15; Laws 2019, LB532, § 5.
Operative date January 1, 2020.

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(1) Upon the issuance of a temporary ex parte or final protection order under section 42-925, the clerk of the court shall forthwith provide the petitioner, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the protection order to the sheriff's office in the county where the respondent may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection order. If any protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

(3) When provided by the petitioner, the court shall make confidential numeric victim identification information, including social security numbers and dates of birth, available to appropriate criminal justice agencies engaged in protection order enforcement efforts. Such agencies shall maintain the confidentiality of this information, except for entry into state and federal data bases for protection order enforcement.

Source: Laws 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24; Laws 2012, LB310, § 5; Laws 2019, LB532, § 6.
Operative date January 1, 2020.



INFANTS AND JUVENILES

CHAPTER 43
INFANTS AND JUVENILES

Article.

- 2. Juvenile Code.
 - (b) General Provisions. 43-245 to 43-247.04.
 - (d) Preadjudication Procedures. 43-260.04, 43-260.06.
 - (e) Prosecution. 43-274 to 43-276.
 - (g) Disposition. 43-285 to 43-287.
 - (i) Miscellaneous Provisions. 43-2,108.01 to 43-2,108.05.
- 13. Foster Care.
 - (a) Foster Care Review Act. 43-1311.03.
- 21. Age of Majority. 43-2101.
- 26. Child Care. 43-2606.
- 29. Parenting Act. 43-2922 to 43-2938.
- 32. McGruff House. Repealed.
- 33. Support Enforcement.
 - (e) State Disbursement Unit. 43-3342.03.
- 42. Nebraska Children’s Commission. 43-4201 to 43-4218.
- 44. Child Welfare Services. 43-4406.
- 45. Young Adult Bridge to Independence Act. 43-4504 to 43-4514.
- 47. Nebraska Strengthening Families Act. 43-4701, 43-4716.

ARTICLE 2
JUVENILE CODE

(b) GENERAL PROVISIONS

Section

- 43-245. Terms, defined.
- 43-246. Code, how construed.
- 43-247.03. Restorative justice practices; confidential; privileged communications.
- 43-247.04. Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.

(d) PREADJUDICATION PROCEDURES

- 43-260.04. Juvenile pretrial diversion program; requirements.
- 43-260.06. Juvenile diversion agreement; contents.

(e) PROSECUTION

- 43-274. County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal.
- 43-275. Petition, complaint, or restorative justice program consent form; filing; time.
- 43-276. County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources.

(g) DISPOSITION

- 43-285. Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.
- 43-286. Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.

Section

43-287. Impoundment of license or 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; not eligible for ignition interlock permit.

(i) MISCELLANEOUS PROVISIONS

43-2,108.01. Sealing of records; juveniles eligible.

43-2,108.02. Sealing of records; notice to juvenile; contents.

43-2,108.03. Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

43-2,108.04. Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

43-2,108.05. Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Alternative to detention means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(4) 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;

(5) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(6) 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;

(7) 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;

(8) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(9) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(10) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(11) Juvenile means any person under the age of eighteen;

(12) 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;

(13) Juvenile detention facility has the same meaning as in section 83-4,125;

(14) Legal custody has the same meaning as in section 43-2922;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) 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;

(17) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) Physical custody has the same meaning as in section 43-2922;

(20) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Restorative justice means practices, programs, or services that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense. Restorative justice practices may include, but are not limited to, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation;

(22) Restorative justice facilitator means a qualified individual who has been trained to facilitate restorative justice practices. A qualified individual shall be approved by the referring county attorney, city attorney, or juvenile or county court judge. Factors for approval may include, but are not limited to, an individual's education and training in restorative justice principles and practices; experience in facilitating restorative justice sessions; understanding of the necessity to do no harm to either the victim or the person who harmed the victim; and proven commitment to ethical practices;

(23) 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;

(24) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(25) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to

physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services;

(26) 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;

(27) 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; and

(28) Young adult means an individual older than eighteen years of age but under twenty-one years of age.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3; Laws 2015, LB265, § 2; Laws 2016, LB894, § 1; Laws 2019, LB595, § 23.

Effective date September 1, 2019.

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, or victim surrogates when appropriate, through restorative justice practices and fulfilling

the terms of the resulting reparation plan which may require apologies, restitution, community service, or other agreed-upon means of making amends;

(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; Laws 2019, LB595, § 24.
Effective date September 1, 2019.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-247.03 Restorative justice practices; confidential; privileged communications.

(1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through restorative justice practices. Restorative justice practices may include, but are not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, juvenile victim-offender dialogue, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation. The Office of Dispute Resolution shall be responsible for funding and management for such services provided by approved centers. All discussions taking place during such restorative justice practices, including plea negotiations, shall be confidential and privileged communications as provided in section 25-2914.01.

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human

Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan;

(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes; and

(e) Victim youth conferencing means a process in which a restorative justice facilitator meets with the juvenile and the victim, when appropriate, in an effort to convene a dialogue in which the juvenile takes responsibility for his or her actions and the victim or victim surrogate is able to address the juvenile and create a reparation plan agreement, which may include apologies, restitution, community services, or other agreed-upon means of amends.

Source: Laws 2008, LB1014, § 38; R.S.1943, (2008), § 43-247.01; Laws 2014, LB464, § 10; Laws 2019, LB595, § 25.
Effective date September 1, 2019.

43-247.04 Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.

(1) It is the intent of the Legislature to transfer four hundred fifty thousand dollars in General Funds from the Department of Health and Human Services' 2014-15 budget to the office of the State Court Administrator's budget for the purpose of making the State Court Administrator directly responsible for contracting and paying for court-connected prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, victim youth conferencing, juvenile victim-offender dialogue, and other restorative justice practices. Such funds shall be transferred on or before October 15, 2014.

(2) The Department of Health and Human Services shall continue to be responsible for contracting with mediation centers approved by the Office of Dispute Resolution to provide family group conferences, mediation, and related

services for non-court-involved and voluntary child welfare or juvenile cases through June 30, 2017, unless extended by the Legislature.

Source: Laws 2014, LB464, § 11; Laws 2019, LB595, § 26.
Effective date September 1, 2019.

(d) PREADJUDICATION PROCEDURES

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

(1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:

- (a) The juvenile's age;
- (b) The nature of the offense and role of the juvenile in the offense;
- (c) The number and nature of previous offenses involving the juvenile;
- (d) The dangerousness or threat posed by the juvenile to persons or property;

or

(e) The recommendations of the referring agency, victim, and advocates for the juvenile;

(2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07;

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law; and

(9)(a) Respond to a public inquiry in the same manner as if there were no information or records concerning participation in the diversion program. Information or records pertaining to participation in the diversion program shall not be disseminated to any person other than:

- (i) A criminal justice agency as defined in section 29-3509;
- (ii) The individual who is the subject of the record or any persons authorized by such individual; or
- (iii) Other persons or agencies authorized by law.

(b) An individual, a person, or an agency requesting information subject to subdivision (9)(a) of this section shall provide the diversion program with satisfactory verification of his, her, or its identity.

Source: Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14; Laws 2019, LB354, § 1.
Effective date September 1, 2019.

43-260.06 Juvenile diversion agreement; contents.

A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

- (1) A letter of apology;
- (2) Community service, not to be performed during school hours if the juvenile offender is attending school;
- (3) Restitution;
- (4) Attendance at educational or informational sessions at a community agency;
- (5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and
- (6) Participation in an appropriate restorative justice practice or service.

Source: Laws 2003, LB 43, § 5; Laws 2019, LB595, § 27.
Effective date September 1, 2019.

(e) PROSECUTION

43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal.

(1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, one or more of the following:

- (i) Participation by the juvenile in certain community service programs;
- (ii) Payment of restitution by the juvenile to the victim;
- (iii) Reconciliation between the juvenile and the victim;
- (iv) Apology, when appropriate, between the juvenile and the victim; and
- (v) Any other areas of agreement.

(f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:

(i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or

(ii) Proceed with filing a juvenile court petition or criminal charge.

(g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

(i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or

(ii) File a reduced charge as previously agreed when referred as a part of a plea negotiation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

(5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the

county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.

An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.

If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

Source: Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13; Laws 2014, LB464, § 16; Laws 2017, LB11, § 2; Laws 2019, LB595, § 28.
Effective date September 1, 2019.

43-275 Petition, complaint, or restorative justice program consent form; filing; time.

Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or restorative justice program consent form must be filed within forty-eight hours excluding nonjudicial days.

Source: Laws 1981, LB 346, § 31; Laws 1998, LB 1073, § 21; Laws 2019, LB595, § 29.
Effective date September 1, 2019.

43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources.

(1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or restorative justice, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) 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; (j) whether the victim or juvenile agree to participate in restorative justice; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

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; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17; Laws 2015, LB482, § 5; Laws 2019, LB595, § 30.

Effective date September 1, 2019.

(g) DISPOSITION

43-285 Care of juvenile; duties; authority; placement plan and report; when; independence hearing; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

(b) The department shall provide opportunities for the child, in an age or developmentally appropriate manner, to be consulted in the development of his or her plan as provided in the Nebraska Strengthening Families Act.

(c) The department shall include in the plan for a child who is fourteen years of age or older and subject to the legal care and custody of the department a

written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child'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 help the child prepare for the transition from foster care to a successful adulthood. The court shall also ask the child, in an age or developmentally appropriate manner, if he or she participated in the development of his or her plan and make a finding regarding the child's participation in the development of his or her plan as provided in the Nebraska Strengthening Families Act. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(d) The last court hearing before jurisdiction pursuant to subdivision (3)(a) of section 43-247 is terminated for a child who is sixteen years of age or older or pursuant to subdivision (8) of section 43-247 for a child whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years shall be called the independence hearing. In addition to other matters and requirements to be addressed at this hearing, the independence hearing shall address the child's future goals and plans and access to services and support for the transition from foster care to adulthood consistent with section 43-1311.03 and the Young Adult Bridge to Independence Act. The child shall not be required to attend the independence hearing, but efforts shall be made to encourage and enable the child's attendance if the child wishes to attend, including scheduling the hearing at a time that permits the child's attendance. An independence coordinator as provided in section 43-4506 shall attend the hearing if reasonably practicable, but the department is not required to have legal counsel present. At the independence hearing, the court shall advise the child about the bridge to independence program, including, if applicable, the right of young adults in the bridge to independence program to request a court-appointed, client-directed attorney under subsection (1) of section 43-4510 and the benefits and role of such attorney and to request additional permanency review hearings in the bridge to independence program under subsection (5) of section 43-4508 and how to request such a hearing. The court shall also advise the child, if applicable, of the rights he or she is giving up if he or she chooses not to participate in the bridge to independence program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677. The court shall also make a finding as to whether the child has received the documents as required by subsection (9) of section 43-1311.03.

(3)(a) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or

deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department shall also concurrently file a written sibling placement report as described in subsection (3) of section 43-1311.02 at these times.

(b) 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, including all of the child's siblings that are known to the department, 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 department, association, or individual shall afford a parent or an adult sibling the option of refusing to receive such notifications. 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.

(c) The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182,

§ 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5; Laws 2015, LB243, § 11; Laws 2016, LB746, § 16; Laws 2018, LB1078, § 1; Laws 2019, LB600, § 1.
Operative date July 1, 2019.

Cross References

Foster Care Review Act, see section 43-1318.

Medical Assistance Act, see section 68-901.

Nebraska Strengthening Families Act, see section 43-4701.

Young Adult Bridge to Independence Act, see section 43-4501.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a)(i) This subdivision applies until October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer;

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home, subject to the supervision of the probation officer; or

(C) Cause the juvenile to be placed in a suitable family home or institution, subject to the supervision of the probation officer. If the court has committed the juvenile to the care and custody of the Department of Health and Human Services, the department shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

Under subdivision (1)(a)(i) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until a suitable provision may be made for the juvenile without such payment.

(ii) This subdivision applies beginning October 1, 2013. The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in restorative justice programs or community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer; or

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer;

(b)(i) This subdivision applies to all juveniles committed to the Office of Juvenile Services prior to July 1, 2013. The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of fourteen years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. This minimum age provision shall not apply if the act in question is murder or manslaughter.

(ii) This subdivision applies to all juveniles committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center on or after July 1, 2013.

When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

(A) The motion shall set forth specific factual allegations that support the motion and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267; and

(B) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(I) All levels of probation supervision have been exhausted;

(II) All options for community-based services have been exhausted; and

(III) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

After the hearing, the court may commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center as a condition of an order of intensive supervised probation. Upon commitment by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section.

The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of

Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision.

The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan; or

(c) Beginning July 1, 2013, and until October 1, 2013, the court may commit such juvenile to the Office of Juvenile Services for community supervision.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or until October 1, 2013, enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may order the juvenile to be assessed for referral to participate in a restorative justice program. Factors that the judge may consider for such referral include, but are not limited to: The juvenile's age, intellectual capacity, and living environment; the ages of others who were part of the offense; the age and capacity of the victim; and the nature of the case.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications and the county attorney may file a motion to revoke the juvenile's probation.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke

probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall not be confined, detained, or otherwise significantly deprived of his or her liberty pursuant to the filing of a motion described in this section unless the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met. In all cases when the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met and the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or a court order, the juvenile shall be given a preliminary hearing. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

(6) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(7) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972,

§ 3; Laws 2013, LB561, § 23; Laws 2014, LB464, § 20; Laws 2017, LB8, § 2; Laws 2018, LB670, § 7; Laws 2019, LB595, § 31.

Effective date September 1, 2019.

Cross References

Juvenile probation officers, appointment, see section 29-2253.

Placements and commitments, restrictions, see section 43-251.01.

43-287 Impoundment of license or 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; not eligible for ignition interlock permit.

(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 holds any license or permit issued under the Motor Vehicle Operator's License Act, impound any such license or permit 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.

(4) A juvenile who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

Source: Laws 2010, LB800, § 24; Laws 2012, LB751, § 5; Laws 2019, LB269, § 1.

Effective date September 1, 2019.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

(i) MISCELLANEOUS PROVISIONS

43-2,108.01 Sealing of records; juveniles eligible.

(1) 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, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney:

(a) Declined to file a juvenile petition or criminal complaint;

(b) Offered juvenile pretrial diversion, mediation, or restorative justice to the juvenile under the Nebraska Juvenile Code;

(c) Filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247;

(d) Filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia;

(e) Filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense, when all offenses in the case are waiveable offenses; or

(f) Filed a criminal complaint in county or district court for a felony offense under state law or a city or village ordinance that was subsequently transferred to juvenile court for ongoing jurisdiction.

(2) The changes made by Laws 2019, LB354, to the relief set forth in sections 43-2,108.03 to 43-2,108.05 shall apply to all persons described in this section, as amended by Laws 2019, LB354, for offenses occurring prior to, on, or after September 1, 2019.

Source: Laws 2010, LB800, § 26; Laws 2011, LB463, § 6; Laws 2019, LB354, § 2; Laws 2019, LB595, § 32.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB354, section 2, with LB595, section 32, to reflect all amendments.

43-2,108.02 Sealing of records; notice to juvenile; contents.

(1) By January 1, 2020, the Supreme Court shall promulgate a written notice that:

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has satisfactorily completed the diversion, mediation, restorative justice, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court diversion program, probation ordered by the court, or sentence ordered by the court;

(b) States in developmentally appropriate language that, if the record is not sealed as provided in subdivision (1)(a) of this section, the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner; and

(c) Explains in developmentally appropriate language what sealing the record means.

(2) For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall attach a copy of the notice to any juvenile petition or criminal complaint.

Source: Laws 2010, LB800, § 27; Laws 2011, LB463, § 7; Laws 2019, LB354, § 3; Laws 2019, LB595, § 33.
Effective date September 1, 2019.

43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

(1)(a) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation 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 government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed. The county attorney or city attorney shall provide written notification to the juvenile that no juvenile petition or criminal complaint was filed and provide the juvenile with the notice described in section 43-2,108.02.

(b) If a juvenile described in subdivision (1)(a) of this section discovers that his or her record was not automatically sealed, such juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (1)(a) of this section.

(2)(a) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion, mediation, or restorative justice, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion, mediation, or restorative justice. At the time the juvenile is offered diversion, mediation, or restorative justice, the county attorney or city attorney shall provide the notice described in section 43-2,108.02 to the juvenile. The county attorney or city attorney shall also provide written notification to the juvenile of his or her satisfactory or unsatisfactory completion of diversion, mediation, or restorative justice.

(b) If a juvenile who was satisfactorily discharged from diversion, mediation, or restorative justice discovers that his or her record was not automatically sealed, the juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (2)(a) of this section.

(3)(a) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but the case was dismissed by the court, the court shall seal the record as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (3)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(4)(a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program

provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(5) A government agency or court that receives notice under subdivision (1)(a) or (2)(a) of this section shall, upon such receipt, immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, mediation, or restorative justice.

(6) When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court. The motion shall set forth the facts supporting the argument that the individual who is the subject of the juvenile petition or criminal complaint has been satisfactorily rehabilitated.

Source: Laws 2010, LB800, § 28; Laws 2011, LB463, § 8; Laws 2019, LB354, § 4; Laws 2019, LB595, § 34.
Effective date September 1, 2019.

43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice. Any such response shall be served on all parties to the case. If the response objects to the sealing of a record, such response shall specify which factor or factors under subsection (5) of this section form the basis for the objection and shall set forth the facts supporting any argument that the juvenile has not been satisfactorily rehabilitated.

(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 shall order that the record of the juvenile under consideration be sealed.

(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 sixty 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 shall order the record of the juvenile that is the subject of the motion be sealed if it finds by a preponderance of the evidence 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 behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, restorative justice, probation, supervision, other treatment or rehabilitation program, or sentence;

(b) The education and employment history of the juvenile; and

(c) Any other circumstances that may relate to the rehabilitation of the juvenile.

(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 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

Source: Laws 2010, LB800, § 29; Laws 2011, LB463, § 9; Laws 2019, LB354, § 5; Laws 2019, LB595, § 35.
Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB354, section 5, with LB595, section 35, to reflect all amendments.

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile using developmentally appropriate language what sealing the record means. The explanation shall be given verbally if the juvenile is present in the court at the time the court issues the sealing order and by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order. The sealing order shall include contact information for each government agency subject to the sealing order.

(2) The effect of having a record sealed is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to the individual who is the subject of the sealed record and any persons authorized by such individual, law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, to a judge making a determination whether to transfer a case to or from juvenile court, to any attorney representing the subject of the sealed record, and to the Inspector General of Nebraska Child Welfare pursuant to an investigation conducted under the Office of Inspector General of Nebraska Child Welfare Act. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) By the individual who is the subject of the sealed record and by persons authorized by such individual. The individual shall provide satisfactory verification of his or her identity;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court or the State Court Administrator, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if the individual whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department's web site to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who knowingly violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24; Laws 2015, LB265, § 6; Laws 2016, LB954, § 2; Laws 2019, LB354, § 6.
Effective date September 1, 2019.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

ARTICLE 13 FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section

43-1311.03. Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.

(a) FOSTER CARE REVIEW ACT

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.

(1) When a child placed in foster care turns fourteen years of age or enters foster care and is at least fourteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to successful adulthood. Any revision or addition to such proposal shall also be made in consultation with the child. The transition proposal shall be personalized based on the child's needs and shall describe the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act. The transition proposal shall include, but not be limited to, the following needs and the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act:

(a) Education;

(b) Employment services and other workforce support;

(c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(d) Behavioral health treatment and support needs and access to such treatment and support;

(e) Financial assistance, including education on credit card financing, banking, and other services;

(f) Housing;

(g) Relationship development and permanent connections; and

(h) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child. As provided in the Nebraska Strengthening Families Act, one of the individuals selected by the child may be designated as the child's advisor and, as necessary, advocate for the child with respect to the application of the reasonable and prudent parent standard and for the child on normalcy activities. The department may reject an individual selected by the child to be a member of the team if the department has good cause to believe the individual would not act in the best interests of the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court. The court shall determine whether the transition proposal includes the services needed to assist the child to make the transition from foster care to a successful adulthood.

(4) The transition proposal shall document what efforts were made to involve and engage the child in the development of the transition proposal and any revisions or additions to the transition proposal. As provided in the Nebraska Strengthening Families Act, the court shall ask the child, in an age or developmentally appropriate manner, about his or her involvement in the development of the transition proposal and any revisions or additions to such proposal. As provided in the Nebraska Strengthening Families Act, the court shall make a finding as to the child's involvement in the development of the transition proposal and any revisions or additions to such proposal.

(5) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(6) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(7) The department shall provide without cost a copy of any consumer report as defined in 15 U.S.C. 1681a(d), as such section existed on January 1, 2016, pertaining to the child each year until the child is discharged from care and assistance, including when feasible, from the child's guardian ad litem, in interpreting and resolving any inaccuracies in the report as provided in the Nebraska Strengthening Families Act.

(8)(a) Any child who is adjudicated to be a juvenile described in (i) subdivision (3)(a) of section 43-247 and who is in an out-of-home placement or (ii) subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years, shall receive information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act.

(b) The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to participate in the program. The notice shall include information about eligibility and requirements to participate in the program, the extended services and support that young adults are eligible to receive under the program, and how young adults can be a part of the program. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney.

(c) The department shall disseminate this information to any child who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement at sixteen years of age and any child who was adjudicated to be a juvenile under subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years. The department shall disseminate this information to any such child yearly thereafter until such child attains the age of nineteen years and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall

explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(9) On or before the date the child reaches eighteen or nineteen years of age or twenty-one years of age if the child participates in the bridge to independence program, if the child is leaving foster care, the department shall provide the child with:

(a) A certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card;

(b) Health insurance information and all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(c) A copy of the child's medical records;

(d) A driver's license or identification card issued by a state in accordance with the requirements of section 202 of the REAL ID Act of 2005, as such section existed on January 1, 2016;

(e) A copy of the child's educational records;

(f) A credit report check;

(g) Contact information, with permission, for family members, including siblings, with whom the child can maintain a safe and appropriate relationship, and other supportive adults;

(h) A list of local community resources, including, but not limited to, support groups, health clinics, mental and behavioral health and substance abuse treatment services and support, pregnancy and parenting resources, and employment and housing agencies;

(i) Written information, including, but not limited to, contact information, for disability resources or benefits that may assist the child as an adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677, as such section existed on January 1, 2016, and disability benefits, including supplemental security income pursuant to 42 U.S.C. 1382 et seq., as such sections existed on January 1, 2016, or social security disability insurance pursuant to 42 U.S.C. 423, as such section existed on January 1, 2016, if the child may be eligible as an adult;

(j) An application for public assistance and information on how to access the system to determine public assistance eligibility;

(k) A letter prepared by the department that verifies the child's name and date of birth, dates the child was in foster care, and whether the child was in foster care on his or her eighteenth, nineteenth, or twenty-first birthday and enrolled in medicaid while in foster care;

(l) Written information about the child's Indian heritage or tribal connection, if any; and

(m) Written information on how to access personal documents in the future.

All fees associated with securing the certified copy of the child's birth certificate or obtaining an operator's license or a state identification card shall be waived by the state.

The transition proposal shall document that the child was provided all of the documents listed in this subsection. The court shall make a finding as to

whether the child has received the documents as part of the independence hearing as provided in subdivision (2)(d) of section 43-285.

Source: Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3; Laws 2014, LB853, § 25; Laws 2016, LB746, § 19; Laws 2019, LB600, § 2.
Operative date July 1, 2019.

Cross References

Young Adult Bridge to Independence Act, see section 43-4501.

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.

(1) 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.

(2) 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:

(a) Eighteen years of age or older and who is not a ward of the state may:

(i) Enter into a binding contract or lease of whatever kind or nature and shall be legally responsible for such contract or lease, including legal responsibility to third parties;

(ii) Execute, sign, authorize, or otherwise authenticate (A) an effective financing statement, (B) a promissory note or other instrument evidencing an obligation to repay, or (C) a mortgage, trust deed, security agreement, financing statement, or other security instrument to grant a lien or security interest in real or personal property or fixtures, and shall be legally responsible for such document, including legal responsibility to third parties; and

(iii) Acquire or convey title to real property and shall have legal responsibility for such acquisition or conveyance, including legal responsibility to third parties; and

(b) Eighteen years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

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; Laws 2018, LB982, § 1; Laws 2019, LB55, § 5.
Effective date September 1, 2019.

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 26
CHILD CARE**

Section

43-2606. Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

43-2606 Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) Beginning January 1, 2020, for programs that report to the Nebraska Early Childhood Professional Record System created under section 71-1962, the department shall use the Nebraska Early Childhood Professional Record System to (a) document the training levels of staff in specific child care settings to assist parents in selecting optimal care settings and (b) verify minimum training requirements of employees of such programs.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. Preservice orientation and the training requirements for providers of child care programs shall include, but not be limited to, information on sudden unexpected infant death syndrome, abusive head trauma in infants and children, crying plans, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149; Laws 2018, LB717, § 1; Laws 2019, LB60, § 1; Laws 2019, LB590, § 1.

Effective date September 1, 2019.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB60, section 1, with LB590, section 1, to reflect all amendments.

ARTICLE 29

PARENTING ACT

Section

- 43-2922. Terms, defined.
- 43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.
- 43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.

43-2922 Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator authorized to provide mediation under section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3; Laws 2015, LB219, § 31; Laws 2019, LB595, § 36. Effective date September 1, 2019.

Cross References

Conciliation Court Law, see section 42-802.

Uniform Deployed Parents Custody and Visitation Act, see section 43-4601.

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 appro-

priate, 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 who are qualified under subsection (2) or (3) of section 43-2938.

(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 43-2938.

(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; Laws 2019, LB595, § 37.
Effective date September 1, 2019.

43-2938 Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, a mediator approved by the Office of Dispute Resolution, or an attorney as provided in subsection (4) of this section.

(2) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a

mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators for inclusion in the roster to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

(4) In lieu of qualifying as a mediator under subsection (2) or (3) of this section, an attorney licensed to practice law in the State of Nebraska may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

Source: Laws 2007, LB554, § 19; Laws 2019, LB595, § 38.
Effective date September 1, 2019.

ARTICLE 32
MCGRUFF HOUSE

Section
43-3201. Repealed. Laws 2019, LB2, § 1.

43-3201 Repealed. Laws 2019, LB2, § 1.

ARTICLE 33
SUPPORT ENFORCEMENT

(e) STATE DISBURSEMENT UNIT

Section
43-3342.03. State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

(e) STATE DISBURSEMENT UNIT

43-3342.03 State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

(1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued. Support order payments made to the clerk of the district court shall be forwarded to the State Disbursement Unit by electronic transfer.

(2) The State Disbursement Unit may collect a fee equal to the actual cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. After a payor has originated one payment resulting in a returned check or an electronic payment not accepted within a period of two years, the unit may issue a notice to the originator that, for the following year, any payment shall be required to be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit. After a payor has originated two payments resulting in returned checks or electronic payments not accepted, the unit may issue a notice to the originator that all future payments shall be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment. The fees shall be remitted to the State Treasurer for credit to the State Disbursement Unit Cash Fund, which is hereby created,

which funds shall be used to offset the expenses incurred in the collection of child support bad debt and other collection expenses incurred by the unit. 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) The State Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments.

(4) Employers with more than fifty employees who have an employee with a child support order shall remit child support payments electronically.

Source: Laws 2000, LB 972, § 3; Laws 2002, LB 1062, § 4; Laws 2005, LB 116, § 21; Laws 2008, LB620, § 1; Laws 2019, LB505, § 1. Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 42

NEBRASKA CHILDREN'S COMMISSION

Section

- 43-4201. Legislative findings, declarations, and intent.
- 43-4202. Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.
- 43-4203. Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.
- 43-4204. Strategic child welfare priorities for research or policy development.
- 43-4205. Repealed. Laws 2019, LB600, § 23.
- 43-4206. Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.
- 43-4207. Nebraska Children's Commission; report; hearing.
- 43-4208. Repealed. Laws 2019, LB600, § 23.
- 43-4209. Repealed. Laws 2019, LB600, § 23.
- 43-4210. Repealed. Laws 2019, LB600, § 23.
- 43-4211. Repealed. Laws 2019, LB600, § 23.
- 43-4213. Repealed. Laws 2019, LB600, § 23.
- 43-4214. Repealed. Laws 2019, LB600, § 23.
- 43-4216. Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.
- 43-4217. Foster Care Reimbursement Rate Committee; duties; reports.
- 43-4218. Transferred to section 43-4716.

43-4201 Legislative findings, declarations, and intent.

(1) The Legislature finds and declares that:

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided to children and families by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

(2) It is the intent of the Legislature in creating the Nebraska Children's Commission to provide for the needs identified in subsection (1) of this section, to provide strategic priorities for research or policy development within the child welfare system and juvenile justice system, and to provide a structure to the commission that maintains the framework of the three branches of government and their respective powers and duties.

Source: Laws 2012, LB821, § 1; Laws 2019, LB600, § 3.
Operative date July 1, 2019.

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.

(1) The Nebraska Children's Commission is created as a high-level leadership body to monitor and evaluate the child welfare and juvenile justice systems. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare and juvenile justice programs and services.

(2)(a) The Governor shall appoint fifteen voting members. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare and juvenile justice systems and shall include: (i) A biological parent currently or previously involved in the child welfare system or juvenile justice system; (ii) a young adult previously in foster care; and (iii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed from a list of three nominees submitted by the Commission on Indian Affairs.

(b) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (i) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (ii) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (iii) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (iv) three persons appointed by the State Court Administrator; (v) the executive director of the Foster Care Review Office; (vi) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her

designee; (vii) the Director of Behavioral Health of the Division of Behavioral Health of the Department of Health and Human Services or his or her designee; (viii) the Commissioner of Education or his or her designee; and (ix) the Inspector General of Nebraska Child Welfare.

(3) The nonvoting members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes within their areas of expertise, and gather information for the commission. The commission may hire staff to carry out the responsibilities of the commission.

(4) For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission may hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in updating the statewide strategic plan.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for their actual and necessary expenses as members of such commission as provided in sections 81-1174 to 81-1177. No member of the commission shall have any private financial interest, profit, or benefit from any work of the commission.

(7) It is the intent of the Legislature to fund the operations of the commission using the Nebraska Health Care Cash Fund for fiscal years 2019-20 and 2020-21.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5; Laws 2015, LB87, § 1; Laws 2016, LB746, § 24; Laws 2019, LB600, § 4.
Operative date July 1, 2019.

43-4203 Nebraska Children’s Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.

(1) The Nebraska Children’s Commission shall create a committee to examine state policy regarding the prescription of psychotropic drugs for children who are wards of the state and the administration of such drugs to such children. Such committee shall review the policy and procedures for prescribing and administering such drugs and make recommendations to the commission for changes in such policy and procedures.

(2) The commission shall create a committee to examine the Office of Juvenile Services and the Juvenile Services Division of the Office of Probation

Administration. Such committee shall review the role and effectiveness of out-of-home placements utilized in the juvenile justice system, including the youth rehabilitation and treatment centers, and make recommendations to the commission on the juvenile justice continuum of care, including what populations should be served in out-of-home placements and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the Juvenile Justice Institute at the University of Nebraska at Omaha, the Center for Health Policy at the University of Nebraska Medical Center, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. The recommendations shall include a plan to implement a continuum of care in the juvenile justice system to meet the needs of Nebraska families, including specific recommendations for the rehabilitation and treatment model. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature annually by September 1.

(3) The commission shall collaborate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Crossover Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(4) The commission shall analyze case management workforce issues and make recommendations to the Health and Human Services Committee of the Legislature regarding:

(a) Salary comparisons with other states and the current pay structure based on job descriptions;

(b) Utilization of incentives for persons who work in the area of child welfare;

(c) Evidence-based training requirements for persons who work in the area of child welfare and their supervisors; and

(d) Collaboration with the University of Nebraska to increase and sustain such workforce.

(5) The Foster Care Reimbursement Rate Committee created pursuant to section 43-4216, the Nebraska Strengthening Families Act Committee created pursuant to section 43-4716, and the Bridge to Independence Advisory Committee created pursuant to section 43-4513 shall be under the jurisdiction of the commission.

(6) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.03.

(7) The commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the continuum of services available to

child welfare agencies and to provide resources for children and juveniles outside the child protection system.

(8) The commission may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the commission or may be individuals who have knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, or the ability to collaborate within the subcommittee and with the commission to carry out the powers and duties of the commission. A subcommittee shall meet as necessary to complete the work delegated by the commission and shall report its findings to the relevant committee within the commission.

(9) No member of any committee or subcommittee created pursuant to this section shall have any private financial interest, profit, or benefit from any work of such committee or subcommittee.

Source: Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56; Laws 2014, LB464, § 33; Laws 2016, LB746, § 25; Laws 2018, LB732, § 1; Laws 2019, LB600, § 5.

Operative date July 1, 2019.

43-4204 Strategic child welfare priorities for research or policy development.

The Nebraska Children's Commission shall determine three to five strategic child welfare priorities for research or policy development for each biennium to carry out the legislative intent stated in section 43-4201 for child welfare program and service reform in Nebraska. In determining the strategic child welfare priorities, the commission shall consider the findings and recommendations set forth in the annual report of the Foster Care Review Board, the annual report of the Office of Inspector General for Child Welfare, and the federal Child and Family Services Reviews outcomes.

Source: Laws 2012, LB821, § 4; Laws 2019, LB600, § 6.

Operative date July 1, 2019.

43-4205 Repealed. Laws 2019, LB600, § 23.

Operative date July 1, 2019.

43-4206 Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.

The Department of Health and Human Services and the Office of Probation Administration shall fully cooperate with the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies.

Source: Laws 2012, LB821, § 6; Laws 2019, LB600, § 7.

Operative date July 1, 2019.

43-4207 Nebraska Children's Commission; report; hearing.

The Nebraska Children's Commission shall annually provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature defining its strategic child welfare priorities and progress toward addressing such priorities, summarizing reports from each

committee and subcommittee of the commission, and making recommendations on or before September 1 of each year. The commission shall present a summary of such report in an annual public hearing before the Health and Human Services Committee of the Legislature on or before December 1 of each year.

Source: Laws 2012, LB821, § 7; Laws 2015, LB87, § 2; Laws 2018, LB732, § 2; Laws 2019, LB600, § 8.
Operative date July 1, 2019.

43-4208 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4209 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4210 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4211 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4213 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4214 Repealed. Laws 2019, LB600, § 23.
Operative date July 1, 2019.

43-4216 Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.

(1) The Foster Care Reimbursement Rate Committee is created. The committee shall be convened at least once every four years.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include child welfare; (iii) a representative from an advocacy organization, the singular focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meet-

ings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the members of the committee and the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB530, § 3; Laws 2019, LB600, § 9.
Operative date July 1, 2019.

43-4217 Foster Care Reimbursement Rate Committee; duties; reports.

(1) The Foster Care Reimbursement Rate Committee created in section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

Source: Laws 2013, LB530, § 4; Laws 2019, LB600, § 10.
Operative date July 1, 2019.

43-4218 Transferred to section 43-4716.

ARTICLE 44
CHILD WELFARE SERVICES

Section
43-4406. Child welfare services; report; contents.

43-4406 Child welfare services; report; contents.

On or before each September 15, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by any lead agency or the pilot project and children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area and by lead agency or the pilot project, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30 immediately preceding the date of the report, categorized by service area and by lead agency or the pilot project;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(5) The following information as obtained for each service area and lead agency or the pilot project:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months,

and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, any lead agency or the pilot project through letters of agreement, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(7) From any lead agency or the pilot project, the percentage of its accounts payable to subcontracted child welfare service providers that are thirty days overdue, sixty days overdue, and ninety days overdue;

(8) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was

notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date;

(9) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases; and

(10) Information on children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, as defined in section 28-830, including:

(a) The number of reports to the statewide toll-free number pursuant to section 28-711 alleging sex trafficking of a minor or labor trafficking of a minor and the number of children alleged to be victims;

(b) The number of substantiated victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were already served by the department;

(c) The number of children determined to be reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were previously served by the department;

(d) The types and costs of services provided to children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor; and

(e) The number of ongoing cases opened due to allegations of sex trafficking of a minor or labor trafficking of a minor and number of children and families served through these cases.

Source: Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13; Laws 2017, LB417, § 6; Laws 2018, LB1078, § 5; Laws 2019, LB519, § 15. Effective date September 1, 2019.

ARTICLE 45

YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

Section	
43-4504.	Bridge to independence program; availability.
43-4508.	Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.
43-4511.01.	Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to independence program; choice of participant; notice; contents; department; duties.
43-4513.	Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.
43-4514.	Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

43-4504 Bridge to independence program; availability.

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained at least nineteen years of age;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 or the equivalent under tribal law or who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 or the equivalent under tribal law if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years and who (a) upon attaining nineteen years of age, was in an out-of-home placement or had been discharged to independent living or (b) with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or a state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective;

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult;

(4) Who is a Nebraska resident, except that this requirement shall not disqualify a young adult who was a Nebraska resident but was placed outside Nebraska pursuant to the Interstate Compact for the Placement of Children; and

(5) Who does not meet the level of care for a nursing facility as defined in section 71-424, for a skilled nursing facility as defined in section 71-429, or for an intermediate care facility for persons with developmental disabilities as defined in section 71-421.

The changes made to subdivision (2)(b) of this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 4; Laws 2014, LB853, § 33; Laws 2015, LB243, § 16; Laws 2019, LB600, § 11.

Operative date July 1, 2019.

Cross References

Interstate Compact for the Placement of Children, see section 43-1103.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.

(1) Within fifteen days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) The department shall ensure continuity of care and eligibility by working with a child who wants to participate in the bridge to independence program and is likely to be eligible to participate in such program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247 or subdivision (8) of section 43-247 if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years. The voluntary services and support agreement shall be signed and the petition filed with the court upon the child's nineteenth birthday or within ten days thereafter. There shall be no interruption in the foster care maintenance payment and medical assistance coverage for a child who is eligible and chooses to participate in the bridge to independence program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably practicable, at the request of the young adult, the department, or any other party to the proceeding. The court shall make a reasonable effort finding required by subdivision (6)(c) of this section within twelve months after the court makes its best interests determination under subsection (4) of this section. Upon the filing of the petition as provided in subsection (1) of this section or anytime thereafter, the young adult may request, in the voluntary services and support agreement or by other appropriate means, a timeframe in which the young adult prefers to have the permanency review hearing scheduled and the court shall seek to accommodate the request as practicable and consistent with 42 U.S.C. 675(5)(C). The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. The court shall also determine whether reasonable efforts have been made to achieve the permanency goal as set forth in the case plan and the department's report provided under subdivision (6)(b) of this section. The court shall issue specific written findings regarding such reasonable efforts. The court has the authority to determine whether the young adult is receiving the services and support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

(7) All pleadings, filings, documents, and reports filed pursuant to this section and subdivision (11) of section 43-247 shall be confidential. The proceedings pursuant to this section and subdivision (11) of section 43-247 shall be confidential unless a young adult provides a written waiver or a verbal waiver in court. Such waiver may be made by the young adult in order to permit the proceedings to be held outside of the courtroom or for any other reason. The Foster Care Review Office shall have access to any and all pleadings, filings, documents, reports, and proceedings necessary to complete its case review process. This section shall not prevent the juvenile court from issuing an order identifying individuals and agencies who shall be allowed to receive otherwise confidential information for legitimate and official purposes as authorized by section 43-3001.

Source: Laws 2013, LB216, § 8; Laws 2014, LB853, § 37; Laws 2015, LB243, § 19; Laws 2019, LB600, § 12.
Operative date July 1, 2019.

43-4511.01 Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to

independence program; choice of participant; notice; contents; department; duties.

(1)(a) Young adults who are eligible to participate under both extended guardianship assistance as provided in section 43-4511 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(b) Young adults who are eligible to participate under both extended adoption assistance as provided in section 43-4512 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(2) The department shall create a clear and developmentally appropriate written notice discussing the rights of young adults who are eligible under both extended guardianship assistance and the bridge to independence program and a notice for young adults who are eligible under both extended adoption assistance and the bridge to independence program. The notice shall explain the benefits and responsibilities and the process to apply. The department shall provide the written notice and make efforts to provide a verbal explanation to a young adult with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective. The department shall provide the notice yearly thereafter until such young adult reaches nineteen years of age and not later than ninety days prior to the young adult attaining nineteen years of age.

Source: Laws 2015, LB243, § 21; Laws 2019, LB600, § 13.

Operative date July 1, 2019.

43-4513 Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.

(1) The Bridge to Independence Advisory Committee is created within the Nebraska Children's Commission to advise and make recommendations to the Legislature and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512. The Bridge to Independence Advisory Committee shall provide a written report regarding ongoing implementation, including participation in the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a

rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13; Laws 2014, LB853, § 43; Laws 2015, LB243, § 23; Laws 2018, LB732, § 4; Laws 2019, LB600, § 14. Operative date July 1, 2019.

43-4514 Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

(1) The department shall submit an amended state plan amendment by October 15, 2019, to seek federal Title IV-E funding under 42 U.S.C. 672 for any newly eligible young adult who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 if such young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after the young adult had attained the age of sixteen years and for any newly eligible young adult with respect to whom an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the child had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded adoption assistance agreement was in effect if the child had attained sixteen years of age before the agreement became effective pursuant to subdivision (2)(b) of section 43-4504.

(2) The department shall implement the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673.

(3) The department shall adopt and promulgate rules and regulations as needed to carry out this section by October 15, 2015.

(4) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2015.

Source: Laws 2013, LB216, § 14; Laws 2014, LB853, § 44; Laws 2015, LB243, § 24; Laws 2019, LB600, § 15. Operative date July 1, 2019.

ARTICLE 47

NEBRASKA STRENGTHENING FAMILIES ACT

Section

43-4701. Act, how cited.

43-4716. Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

43-4701 Act, how cited.

Sections 43-4701 to 43-4716 shall be known and may be cited as the Nebraska Strengthening Families Act.

Source: Laws 2016, LB746, § 1; Laws 2017, LB225, § 8; Laws 2019, LB600, § 16.

Operative date July 1, 2019.

43-4716 Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

(1) The Nebraska Strengthening Families Act Committee is created.

(2) The Nebraska Strengthening Families Act Committee shall monitor and make recommendations regarding the implementation in Nebraska of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act.

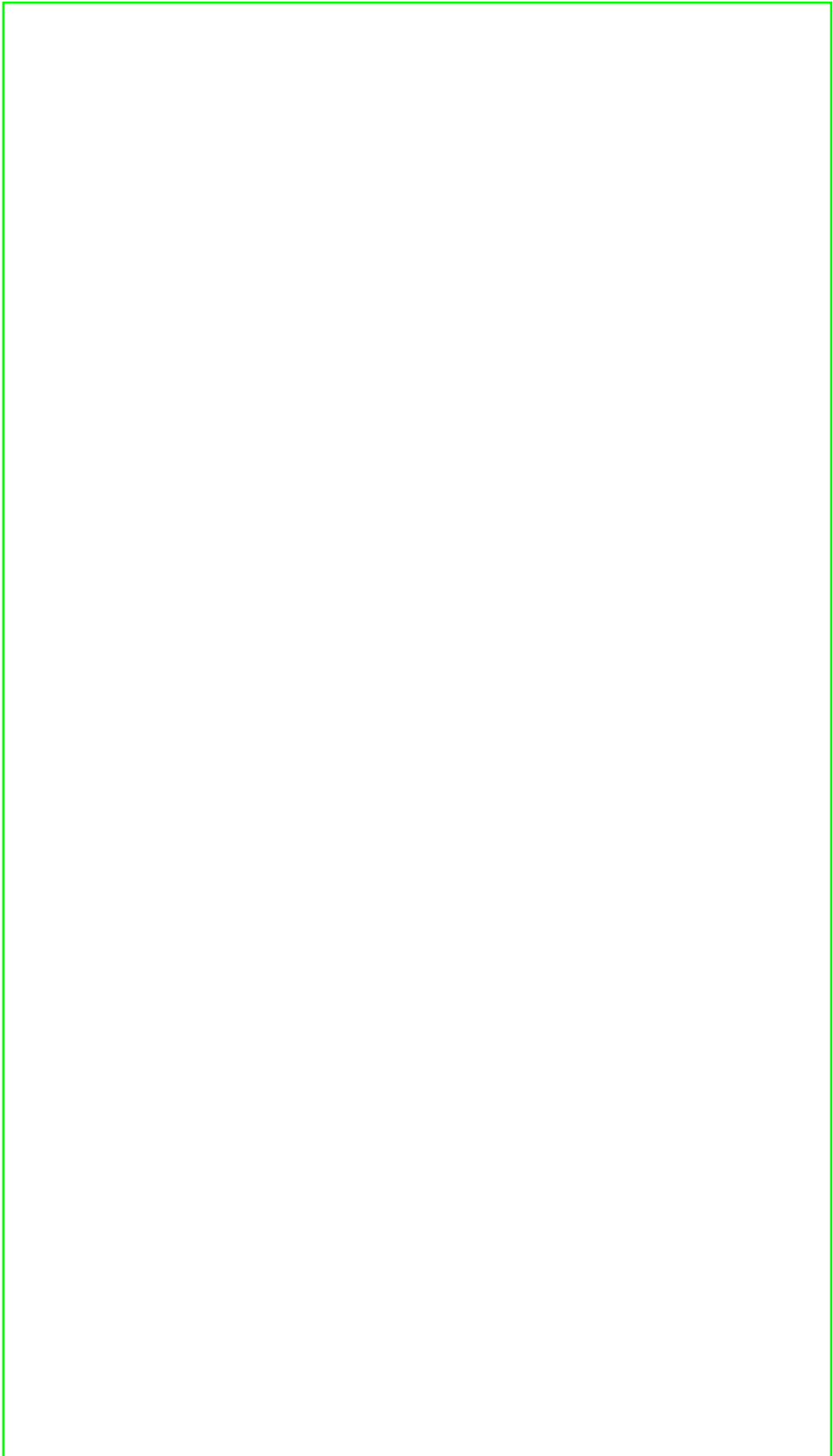
(3) The members of the committee shall include, but not be limited to, (a) representatives from the legislative, executive, and judicial branches of government. The representatives from the legislative and judicial branches shall be nonvoting, ex officio members, (b) no fewer than three young adults currently or previously in foster care which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) a representative from the juvenile probation system, (d) the executive director of the Foster Care Review Office, (e) one or more representatives from a child welfare advocacy organization, (f) one or more representatives from a child welfare service agency, (g) one or more representatives from an agency providing independent living services, (h) one or more representatives of a child-care institution as defined in section 43-4703, (i) one or more current or former foster parents, (j) one or more parents who have experience in the foster care system, (k) one or more professionals who have relevant practical experience such as a caseworker, and (l) one or more guardians ad litem who practice in juvenile court.

(4) Members shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint a chairperson or chairpersons of the committee and may fill vacancies on the committee as such vacancies occur.

(5) The committee shall provide a written report with recommendations regarding the initial and ongoing implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act and related efforts to improve normalcy for children in foster care and related populations to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the Department of Health and Human Services, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

Source: Laws 2016, LB746, § 23; Laws 2017, LB225, § 7; Laws 2018, LB732, § 3; R.S.Supp.,2018, § 43-4218; Laws 2019, LB600, § 17.

Operative date July 1, 2019.



CHAPTER 44

INSURANCE

Article.

1. Powers of Department of Insurance. 44-107.
2. Lines of Insurance, Organization of Companies. 44-213.01 to 44-213.07.
3. General Provisions Relating to Insurance. 44-315 to 44-321.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-7,108.
9. Privacy of Insurance Consumer Information Act. 44-915.
19. Title Insurance.
(b) Title Insurers Act. 44-1984.
24. Nebraska Property and Liability Insurance Guaranty Association Act. 44-2401 to 44-2419.
27. Nebraska Life and Health Insurance Guaranty Association Act. 44-2702 to 44-2719.02.
33. Legal Service Insurance Corporations. 44-3302, 44-3303.
50. Children of Nebraska Hearing Aid Act. 44-5001 to 44-5005.
55. Surplus Lines Insurance. 44-5501 to 44-5508.
75. Property and Casualty Insurance Rate and Form Act. 44-7508.02 to 44-7514.

ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

Section

- 44-107. Notice to Banking, Commerce and Insurance Committee of the Legislature; hearing.

44-107 Notice to Banking, Commerce and Insurance Committee of the Legislature; hearing.

The Department of Insurance shall notify the chairperson and members of the Banking, Commerce and Insurance Committee of the Legislature prior to submitting any request or application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services for a state innovation waiver under section 1332 of the federal Patient Protection and Affordable Care Act. Such notification shall be made electronically and shall include a copy of the application for the federal waiver. The Banking, Commerce and Insurance Committee of the Legislature shall hold a public hearing on such waiver application.

Source: Laws 2019, LB468, § 4.
Effective date September 1, 2019.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section

- 44-213.01. Repealed. Laws 2019, LB469, § 10.
44-213.02. Repealed. Laws 2019, LB469, § 10.
44-213.03. Repealed. Laws 2019, LB469, § 10.
44-213.04. Repealed. Laws 2019, LB469, § 10.
44-213.05. Repealed. Laws 2019, LB469, § 10.
44-213.06. Repealed. Laws 2019, LB469, § 10.

Section

44-213.07. Repealed. Laws 2019, LB469, § 10.

44-213.01 Repealed. Laws 2019, LB469, § 10.

44-213.02 Repealed. Laws 2019, LB469, § 10.

44-213.03 Repealed. Laws 2019, LB469, § 10.

44-213.04 Repealed. Laws 2019, LB469, § 10.

44-213.05 Repealed. Laws 2019, LB469, § 10.

44-213.06 Repealed. Laws 2019, LB469, § 10.

44-213.07 Repealed. Laws 2019, LB469, § 10.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-315. Electronic delivery of notices or documents; conditions; insurer; duties; applicability.

44-316. Insurer; policy and endorsement; mailing, delivery, or posting on web site; conditions for posting on insurer's web site.

44-321. Health insurance policy; mental health service delivered in a school; insurer; prohibited acts.

44-315 Electronic delivery of notices or documents; conditions; insurer; duties; applicability.

(1) For purposes of this section:

(a) Delivered by electronic means includes:

(i) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(ii) Posting on an electronic network or site accessible via the Internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notices or documents or by any other delivery method that has been consented to by the party; and

(b) Party means any recipient of any notice or document required as part of a first-party insurance transaction, including, but not limited to, an applicant, an insured, or a policyholder.

(2) Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act.

(3) Delivery of a notice or document in accordance with this section shall be considered equivalent to any delivery method required under applicable law, including delivery by first-class mail, registered mail, certified mail, certificate of mailing, or a commercial mail delivery service. In any instance in which

proof of receipt is required for a mailing, the electronic delivery method used must provide for verification or acknowledgment of receipt.

(4) A notice or document may be delivered by electronic means by an insurer to a party under this section if:

(a) The party has affirmatively consented to such method of delivery and has not withdrawn the consent;

(b) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(i) The right of the party to withdraw consent to have a notice or document delivered by electronic means at any time;

(ii) Any conditions or consequences imposed in the event consent is withdrawn;

(iii) The transactions and types of notices and documents to which the party's consent would apply;

(iv) The right of a party to have a notice or document delivered in paper form by mail and the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means; and

(v) The procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

(c) The party:

(i) Before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) Consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(d) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

(i) Provides the party with a statement that describes:

(A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(B) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(ii) Complies with subdivision (4)(b) of this section.

(5) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

(6) If any provision of Chapter 44 or any other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(7) If verification or acknowledgment of receipt is not obtained, the notice or document shall be sent to the party by mail as prescribed by Chapter 44. If two or more electronic communications to the party are returned as undeliverable during a thirty-day period, all future communications shall be sent to the party by first-class or other mail as prescribed by law unless and until the party consents electronically, or confirms electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent.

(8) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by an insurer to comply with subdivision (4)(d) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(9) This section does not apply to a notice or document delivered by an insurer in an electronic form before September 1, 2019, to a party who, before such date, has consented to receive notices or documents in an electronic form otherwise allowed by law.

(10) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before September 1, 2019, and pursuant to this section an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall provide the party with a statement that describes:

(a) The notices or documents that will be delivered by electronic means under this section that were not previously delivered electronically; and

(b) The party's right to withdraw consent to have notices or documents delivered by electronic means without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

(11) An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if:

(a) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party; or

(b) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

(12) A producer shall not be subject to civil liability for any harm or injury that occurs as a result of a party's election to receive any notice or document by electronic means or by the insurer's failure to deliver a notice or document by electronic means.

(13) This section shall not be construed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as such act existed on September 1, 2019.

(14) This section shall apply only to life insurance policies, annuity contracts, and property and casualty insurance policies.

Source: Laws 2019, LB116, § 1.

Effective date September 1, 2019.

Cross References

Uniform Electronic Transactions Act, see section 86-612.

44-316 Insurer; policy and endorsement; mailing, delivery, or posting on web site; conditions for posting on insurer's web site.

Notwithstanding the provisions of section 44-315, life insurance policies, annuity contracts, and property and casualty insurance policies and endorsements that do not contain personally identifiable financial information as defined in section 44-903 may be mailed, delivered, or posted on the insurer's web site. If the insurer elects to post insurance policies and endorsements on its web site in lieu of mailing or delivering them to the insured, the insurer must comply with all of the following conditions:

(1) The policy and endorsements must be accessible to the insured and producer of record and remain that way for as long as the policy is in force;

(2) After the expiration of the policy, the insurer must archive its expired policies and endorsements for a period of five years and make them available upon request;

(3) The policies and endorsements must be posted in a manner that enables the insured and producer of record to print and save the policy and endorsements using programs or applications that are widely available on the Internet and free to use;

(4) The insurer must provide the following information in, or simultaneously with, each declarations page provided at the time of issuance of the initial policy and any renewals of such policy:

(a) A description of the exact policy and endorsement forms purchased by the insured;

(b) A description of the insured's right to receive, upon request and without charge, a paper copy of the policy and endorsements by mail; and

(c) The Internet address where the policy and endorsements are posted;

(5) The insurer, upon request and without charge, must mail a paper copy of the policy and endorsements to the insured; and

(6) The insurer must provide notice, in the manner in which the insurer customarily communicates with the insured, of any changes to the forms or endorsements, the insured's right to obtain, upon request and without charge, a paper copy of such forms or endorsements, and the Internet address where such forms or endorsements are posted.

Source: Laws 2019, LB116, § 2.

Effective date September 1, 2019.

44-321 Health insurance policy; mental health service delivered in a school; insurer; prohibited acts.

(1) For purposes of this section:

(a) Health insurance policy means (i) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for a policy that provides coverage for a specified disease or other limited-benefit coverage, and (ii) any self-funded employee benefit plan to the extent not preempted by federal law; and

(b) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79.

(2) Notwithstanding section 44-3,131, an insurer offering a health insurance policy shall not deny coverage or payment for a mental health service solely because the service is delivered in a school.

(3) Nothing in this section shall:

(a) Require an insurer offering a health insurance policy to pay for mental health services that are otherwise excluded from such health insurance policy;

(b) Require an insurer offering a health insurance policy to pay for mental health services that are provided by an individual employed by or under contract with a school district or an educational service unit in a regular full-time or part-time position; or

(c) Prevent application of any other provision of such health insurance policy.

(4) This section applies to health insurance policies issued or renewed on or after January 1, 2020, and to claims for reimbursement based on such policies for costs incurred on or after January 1, 2020.

Source: Laws 2019, LB619, § 1.

Effective date September 1, 2019.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section

44-7,108. Synchronizing patient's medications; coverage.

44-7,108 Synchronizing patient's medications; coverage.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law that provides coverage for prescription medications shall apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for a partial supply if the prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications.

(2) A policy, certificate, contract, or plan provider shall not deny coverage for the dispensing of a medication that is dispensed by a network pharmacy on the basis that the dispensing is for a partial supply if the prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications. The policy, certificate, contract, or plan shall allow a pharmacy to override any denial codes indicating that a prescription is being refilled too soon for purposes of medication synchronization.

(3) To be eligible for coverage under this section, the medication:

(a) Must be covered by the enrollee’s health benefit plan or have been approved by a formulary exception process;

(b) Must meet the prior authorization or utilization management criteria specifically applicable to the medication under the health benefit plan on the date the request for synchronization is made;

(c) Must be used for treatment and management of a chronic illness;

(d) Must be a formulation that can be safely split into short-fill periods to achieve medication synchronization; and

(e) Must not be a controlled substance listed in Schedule II of section 28-405.

(4) A policy, certificate, contract, or plan provider shall not use payment structures incorporating prorated dispensing fees. Dispensing fees for partially filled or refilled prescriptions shall be paid in full for each prescription dispensed, regardless of any prorated daily cost-sharing for the beneficiary or fee paid for alignment services.

(5) For purposes of this section, synchronizing the patient’s medications means the coordination of medications for a patient who has been prescribed two or more medications for one or more chronic conditions so that the patient’s medications are refilled on the same schedule for a given time period.

(6) This section shall apply to any policy, certificate, contract, or plan that is delivered, issued for delivery, or renewed in this state on or after September 7, 2019.

Source: Laws 2019, LB442, § 1.

Effective date September 1, 2019.

ARTICLE 9

PRIVACY OF INSURANCE CONSUMER INFORMATION ACT

Section

44-915. Notice and opt out requirements; additional exceptions.

44-915 Notice and opt out requirements; additional exceptions.

The requirements for initial notice to consumers in subdivision (1)(b) of section 44-904, the opt out in sections 44-907 and 44-910, and service providers and joint marketing in section 44-913 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer if the consumer has not revoked the consent or direction;

(2)(a) To protect the confidentiality or security of a licensee’s records pertaining to the consumer, service, product, or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with 12 U.S.C. 3401 et seq., as such sections existed on January 1, 2019, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II, and 12 U.S.C. Chapter 21, as such federal laws existed on January 1, 2019, a state insurance authority, a state banking and state securities authority, and the Federal Trade Commission, to self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(a) To a consumer reporting agency in accordance with 15 U.S.C. 1681 et seq., as such sections existed on January 1, 2019; or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7)(a) To comply with federal, state, or local laws, rules, and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

Source: Laws 2001, LB 52, § 15; Laws 2019, LB258, § 14.
Effective date March 8, 2019.

ARTICLE 19

TITLE INSURANCE

(b) TITLE INSURERS ACT

Section
44-1984. Limitations on powers.

(b) TITLE INSURERS ACT

44-1984 Limitations on powers.

(1) No insurer that transacts any line of business other than title insurance shall be eligible for the issuance or renewal of a certificate of authority to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten, or issued by any insurer transacting or authorized to transact any other line of business.

(2)(a) Notwithstanding subsection (1) of this section, and to the extent such coverage is lawful within this state, a title insurer shall issue closing or

settlement protection covering a proposed insured if the title insurer or its title insurance agent engages in any escrow, settlement, or closing services relating to the issuance of a title insurance commitment or title insurance policy to a proposed insured. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and shall indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title insurance agent:

(i) Theft of settlement funds; and

(ii) Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

(b) The director may prescribe or approve a required charge for providing the coverage.

(c) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

Source: Laws 1997, LB 53, § 7; Laws 2002, LB 1139, § 20; Laws 2004, LB 155, § 1; Laws 2019, LB221, § 1.
Effective date September 1, 2019.

ARTICLE 24

NEBRASKA PROPERTY AND LIABILITY INSURANCE GUARANTY ASSOCIATION ACT

Section

- 44-2401. Purpose of act.
- 44-2403. Terms, defined.
- 44-2406. Claims; filing; determination.
- 44-2407. Association; duties; powers; enumerated.
- 44-2409. Director; duties.
- 44-2410. Assignment of rights; notice of claims; settlement; effect; statement of claims; file with director.
- 44-2411. Exhaustion of remedies.
- 44-2415. Exemption from liability.
- 44-2418. Act, how cited.
- 44-2419. Order of liquidation; stay.

44-2401 Purpose of act.

The purpose of the Nebraska Property and Liability Insurance Guaranty Association Act is to provide a method for the payment of certain claims against insolvent insurance companies, as defined in the act, to avoid unnecessary delay in payment of such claims, to avoid financial loss to claimants or to policyholders, to assist in the detection and prevention of insurer insolvencies, and to provide an association of insurers against which the cost of such protection may be assessed in an equitable manner.

Source: Laws 1971, LB 722, § 1; Laws 2019, LB380, § 1.
Effective date September 1, 2019.

44-2403 Terms, defined.

As used in the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account shall mean any one of the three accounts created by section 44-2404;

(2) Director shall mean the Director of Insurance or his or her duly authorized representative;

(3) Association shall mean the Nebraska Property and Liability Insurance Guaranty Association created by section 44-2404;

(4)(a) Covered claim shall mean an unpaid claim as provided for in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and which arises out of and is within the coverage of an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission;

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer. Covered claim shall also not include any amount as punitive or exemplary damages or any amount claimed for incurred but not reported damages. Covered claim shall also not include any claim filed with the guaranty fund after the earlier of twenty-five months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver. This subdivision (4)(b) shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

(5) Insolvent insurer shall mean a member insurer licensed to transact the business of insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after September 2, 1977;

(6) Member insurer shall mean any person licensed to write any kind of insurance to which the Nebraska Property and Liability Insurance Guaranty Association Act applies by the provisions of section 44-2402, including the exchange of reciprocal or interinsurance contracts, that is licensed to transact insurance in this state, except assessment associations operating under Chapter 44, article 8, and also excepting unincorporated mutuals;

(7) Net direct written premiums shall mean direct gross premiums written in this state on insurance policies to which the Nebraska Property and Liability Insurance Guaranty Association Act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct

written premiums shall not include premiums on contracts between insurers or reinsurers;

(8) Person shall mean any individual, corporation, partnership, limited liability company, association, voluntary organization, or reciprocal insurance exchange; and

(9) Insurance shall mean those contracts defined in section 44-102.

Source: Laws 1971, LB 722, § 3; Laws 1974, LB 1014, § 1; Laws 1977, LB 366, § 5; Laws 1988, LB 700, § 1; Laws 1989, LB 319, § 71; Laws 1993, LB 121, § 239; Laws 2019, LB380, § 2.
Effective date September 1, 2019.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-2406 Claims; filing; determination.

(1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member insurer becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of such dates, but such obligation shall include only the amount of each covered claim that does not exceed three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for the amount of each covered claim that does not exceed ten thousand dollars per policy.

(2) The director shall transmit to the association all covered claims timely filed with him or her pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. The association shall thereupon be considered to have been designated the director's representative pursuant to the act, and it shall proceed to investigate, hear, settle, and determine such claims unless the claimant shall, within thirty days from the date the claim is filed with the director, file with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act. In regard to those claims transmitted to the association by the director, the association and claimants shall have all of the rights and obligations and be subject to the same limitations and procedures as are specified in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act for the determination of claims.

(3) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of claimant's inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of such injured claimant's employment. Such

award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself or herself had he or she not been injured. The amount of any such award under this subsection shall be reduced by the amount the claimant is entitled to receive as the beneficiary under any health, accident, or disability insurance, under any salary or wage continuation program under which he or she is entitled to benefits, or from his or her employer in the form of workers' compensation benefits, or any other such benefits to which the claimant is legally entitled, and any claimant who intentionally fails to correctly disclose his or her rights to any such benefits shall forfeit all rights which he or she may have by the provisions of the Nebraska Property and Liability Insurance Guaranty Association Act.

(4) A third party having a covered claim against any insured of an insolvent insurer may file such claim with the director pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent insurer does not afford coverage or unless the claimant, within thirty days from the date of filing his or her claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

Source: Laws 1971, LB 722, § 6; Laws 1977, LB 366, § 6; Laws 1981, LB 275, § 1; Laws 1986, LB 811, § 23; Laws 1988, LB 352, § 64; Laws 1988, LB 700, § 2; Laws 1989, LB 319, § 72; Laws 2019, LB380, § 3.

Effective date September 1, 2019.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-2407 Association; duties; powers; enumerated.

(1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers separately for each account in the amounts necessary to pay the obligations of the association under section 44-2406, the expenses of handling covered claims, the cost of examinations under sections 44-2412 and 44-2413, and other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of such member insurer, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date of the assessment. The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member insurer in any one year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. Except for such administrative

assessment, no member insurer may be assessed in any year on any account an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member insurers that received larger assessments by virtue of such deferment or, in the discretion of any such insurer, credited against future assessments. No member insurer may pay a dividend to shareholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility, except that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and such other expenses of the association as are authorized by the Nebraska Property and Liability Insurance Guaranty Association Act;

(d) Issue to each insurer paying an assessment under this section a certificate of contribution in appropriate form and terms as prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. The insurer may offset against its premium and related retaliatory tax liability to this state pursuant to sections 44-150 and 77-908 accrued with respect to business transacted in such year an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year after the year of issuance. If the association recovers any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by sections 44-150 and 77-908, such recovered sum shall be paid by the association to the director who shall handle such funds in the same manner as provided in Chapter 77, article 9;

(e) Be deemed the insolvent insurer to the extent of the association's obligation for covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer, subject to the limitations provided in the act, as if the insurer had not become insolvent, with the exception that the liquidator shall retain the sole right to recover any reinsurance proceeds. The association's rights under this section include, but are not limited to, the right to pursue and retain salvage and subrogation recoveries on paid covered claim obligations to the extent paid by the guaranty fund; and

(f) Have access to insolvent insurer records. The liquidator of an insolvent insurer shall permit access by the association or its authorized representatives, and by any similar organization in another state or its authorized representatives, to the insolvent insurer's records which are necessary for the association or such similar organization in carrying out its functions with regard to

covered claims. In addition, the liquidator shall provide the association or its representative or such similar organization with copies of such records upon the request and at the expense of the association or similar organization.

(2) The association may:

(a) Appear in, defend, and appeal any action;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(c) Borrow funds necessary to effect the purposes of the Nebraska Property and Liability Insurance Guaranty Association Act in accord with the plan of operation;

(d) Sue or be sued, and such power to sue shall include the power and right to intervene as a party before any court that has jurisdiction over an insolvent insurer as defined by such act;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of such act;

(f) Perform such other acts as are necessary or proper to effectuate the purpose of such act; and

(g) Bring any action against any third-party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all files, records, and electronic data related to an insolvent insurer that is appropriate or necessary for the association, or a similar organization in another state, to carry out duties under such act.

Source: Laws 1971, LB 722, § 7; Laws 1977, LB 366, § 7; Laws 1986, LB 1114, § 5; Laws 1987, LB 302, § 5; Laws 1989, LB 92, § 199; Laws 2000, LB 930, § 6; Laws 2019, LB380, § 4.
Effective date September 1, 2019.

44-2409 Director; duties.

(1) The director shall:

(a) Notify the association of the existence of any insolvent insurer not later than three days after he or she receives notice of the determination of the insolvency and order of liquidation pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act; and

(b) Upon request of the board of directors of the association, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The director may:

(a) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due, unless such payment was deferred by the association in the manner provided in the Nebraska Property and Liability Insurance Guaranty Association Act, or fails to comply with the plan of operation; and

(b) Revoke the designation of any servicing facility if he or she finds the claims are not being handled in good faith. Designation of a new servicing

facility shall be accomplished in the manner set out in subdivision (1)(b) of section 44-2407.

Source: Laws 1971, LB 722, § 9; Laws 1989, LB 319, § 73; Laws 2019, LB380, § 5.

Effective date September 1, 2019.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-2410 Assignment of rights; notice of claims; settlement; effect; statement of claims; file with director.

(1) Any person recovering under the Nebraska Property and Liability Insurance Guaranty Association Act shall be deemed to have assigned his or her rights under the policy to the association to the extent of such recovery from the association. Every insured or claimant seeking recovery under the act shall be required to cooperate with the association to the same extent he or she would have been required to cooperate with the insolvent insurer.

(2) Notice of claims to the liquidator or receiver of the insolvent member insurer shall be deemed notice to the association or its agent, and a list of covered claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(3) The receiver, liquidator, or statutory successor of an insolvent member insurer shall be bound by settlements of covered claims by the association or a similar organization in another state.

(4) The association shall periodically file with the director statements of covered claims paid by the association and estimates of anticipated claims against the association.

Source: Laws 1971, LB 722, § 10; Laws 1977, LB 366, § 8; Laws 2019, LB380, § 6.

Effective date September 1, 2019.

44-2411 Exhaustion of remedies.

(1) Any person having a claim against any insurer under any provisions of any insurance policy, which claim is also a covered claim against an insolvent insurer under the Nebraska Property and Liability Insurance Guaranty Association Act, shall be required to exhaust all rights under such policy before the association is obligated to pay the covered claim under such act. Any amount payable on a covered claim by the provisions of such act shall be reduced by the amount of such recovery under any other insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association, or its equivalent, shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery pursuant to the Nebraska Property and Liability Insurance Guaranty Associa-

tion Act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

Source: Laws 1971, LB 722, § 11; Laws 1986, LB 811, § 24; Laws 2019, LB380, § 7.

Effective date September 1, 2019.

44-2415 Exemption from liability.

There shall be no liability on the part of, and no cause of action of any nature shall rise against, any member insurer, the association or its agents or employees, the board of directors of the association, any servicing facility designated by the association in accordance with the Nebraska Property and Liability Insurance Guaranty Association Act or the agents or employees or officers of such servicing facility, or the director or his or her representatives for any action taken by them in the performance of their powers and duties under the act.

Source: Laws 1971, LB 722, § 15; Laws 2019, LB380, § 8.

Effective date September 1, 2019.

44-2418 Act, how cited.

Sections 44-2401 to 44-2419 shall be known and may be cited as the Nebraska Property and Liability Insurance Guaranty Association Act.

Source: Laws 1971, LB 722, § 18; Laws 1974, LB 1014, § 3; Laws 2019, LB380, § 9.

Effective date September 1, 2019.

44-2419 Order of liquidation; stay.

All proceedings arising out of a claim under a policy of insurance written by an insolvent insurer shall be stayed for one hundred twenty days from the date of entry of the order of liquidation to permit proper defense by the association of all such pending causes of action. Nothing in this section shall be deemed to limit the powers of a receiver appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or to stay any proceeding brought pursuant to such act.

Source: Laws 2019, LB380, § 10.

Effective date September 1, 2019.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

ARTICLE 27

NEBRASKA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Section

- | | |
|----------|---|
| 44-2702. | Terms, defined. |
| 44-2703. | Coverages authorized. |
| 44-2706. | Board of directors; members; how selected; voting rights; represent insurers; expenses. |
| 44-2707. | Association; powers and duties; enumerated. |
| 44-2708. | Assessments against member insurers; procedure; effect; protest or appeal. |
| 44-2709. | Association; plan of operation; requirements. |

Section

- 44-2713. Impaired or insolvent insurer; effect; procedure.
44-2718. Stay of proceedings against impaired insurer; purpose; association; apply to set aside judgment or defend.
44-2719.01. Using name of association; when prohibited.
44-2719.02. Insurer under court order; provisions applicable; act; applicability.

44-2702 Terms, defined.

As used in the Nebraska Life and Health Insurance Guaranty Association Act, unless the context otherwise requires:

(1) Account means any of the three accounts created pursuant to section 44-2705;

(2) Association means the Nebraska Life and Health Insurance Guaranty Association created by section 44-2705;

(3) Authorized, when used in the context of assessments, or authorized assessment means a resolution by the board of directors has passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed;

(4) Called, when used in the context of assessments, or called assessment means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers;

(5) Director means the Director of Insurance;

(6) Contractual obligation means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 44-2703;

(7) Covered policy means any policy or contract or portion of such policy or contract for which coverage is provided under section 44-2703;

(8) Extra-contractual claims include, but are not limited to, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs;

(9) Benefit plan means a specific employee, union, or association of natural persons benefit plan;

(10) Health benefit plan means any hospital or medical expense policy or certificate, health maintenance organization subscriber contract, or any other similar health contract. Health benefit plan does not include:

- (a) Accident only insurance;
- (b) Credit insurance;
- (c) Dental only insurance;
- (d) Vision only insurance;
- (e) Medicare supplement insurance;
- (f) Benefits for long-term care, home health care, community-based care, or any combination thereof;
- (g) Disability income insurance;
- (h) Coverage for onsite medical clinics; or

(i) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates;

(11) Impaired insurer means a member insurer which, after August 24, 1975, (a) is deemed by the director to be potentially unable to fulfill its contractual obligations and is not an insolvent insurer and (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(12) Insolvent insurer means a member insurer which, after August 24, 1975, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(13) Member insurer means an insurer or health maintenance organization licensed or that holds a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided for under section 44-2703. Member insurer includes any insurer or health maintenance organization whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn. Member insurer does not include:

(a) A hospital or medical service organization, whether profit or nonprofit;

(b) A fraternal benefit society;

(c) A mandatory state pooling plan;

(d) A mutual assessment company or other person that operates on an assessment basis;

(e) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;

(f) An insurance exchange;

(g) An organization that has a certificate or license limited to the issuance of charitable gift annuities;

(h) A viatical settlement provider, a viatical settlement broker, or a financing entity under the Viatical Settlements Act; or

(i) An entity similar to any entity listed in subdivisions (13)(a) through (h) of this section;

(14) Moody's corporate bond yield average means the monthly average of corporate bond yields published by Moody's Investment Service, Incorporated, or any successor to Moody's Investment Service, Incorporated;

(15) Owner of a policy or contract, policyholder, policy owner, and contract owner mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. Owner, policy owner, and contract owner do not include persons with a mere beneficial interest in a policy or contract;

(16) Person means any individual, corporation, partnership, limited liability company, association, government body or entity, or voluntary organization;

(17) Plan sponsor means:

(a) In the case of a benefit plan established or maintained by a single employer, the employer;

(b) In the case of a benefit plan established or maintained by an employee organization, the employee organization; or

(c) In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan;

(18) Premiums means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits, and less dividends and experience credits. Premiums does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection (2) of section 44-2703, except that assessable premiums shall not be reduced on account of subdivision (2)(b)(iii) of section 44-2703 relating to interest limitations and subdivision (3)(b) of section 44-2703 relating to limitations with respect to one individual, one participant, and one policy or contract owner. Premiums does not include:

(a) Premiums on an unallocated annuity contract; or

(b) With respect to multiple nongroup life insurance policies owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, premiums exceeding five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner;

(19)(a) Principal place of business of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy or contract for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function. The association shall in its reasonable judgment determine the principal place of business considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors or similar governing person or persons of the entity conducts the majority of meetings;

(iv) The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in subdivisions (19)(a)(i) through (v) of this section, except that in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question;

(20) Receivership court means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer;

(21) Resident means any person to whom a contractual obligation is owed who resides in this state at the date of entry of a court order that determines that a member insurer is an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one state. A person other than a natural person shall be a resident of its principal place of business. Citizens of the United States that are residents of foreign countries, or are residents of a United States possession, territory, or protectorate that does not have an association similar to the association created by the Nebraska Life and Health Insurance Guaranty Association Act, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts;

(22) State means a state, the District of Columbia, Puerto Rico, and any United States possession, territory, or protectorate;

(23) Structured settlement annuity means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant;

(24) Supplemental contract means any agreement entered into between a member insurer and an owner or beneficiary for the distribution of policy or contract proceeds under a covered policy or contract; and

(25) Unallocated annuity contract means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Source: Laws 1975, LB 217, § 2; Laws 1986, LB 593, § 4; Laws 1993, LB 121, § 244; Laws 2001, LB 360, § 14; Laws 2012, LB887, § 16; Laws 2019, LB159, § 1.
Effective date March 13, 2019.

Cross References

Viatical Settlements Act, see section 44-1101.

44-2703 Coverages authorized.

(1)(a) The Nebraska Life and Health Insurance Guaranty Association Act shall provide coverage for the policies and contracts specified in subsection (2) of this section:

(i) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under subdivision (1)(a)(ii) of this section; and

(ii) To persons who are owners of or certificate holders under the policies or contracts, other than structured settlement annuities, and in each case who:

(A) Are residents; or

(B) Are not residents and all of the following conditions apply:

(I) The member insurer that issued the policies or contracts is domiciled in this state;

(II) The states in which the persons reside have associations similar to the association created by the act; and

(III) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer or health maintenance organization was not licensed in the state at the time specified in the state's guaranty association law.

(b) For structured settlement annuities specified in subsection (2) of this section, subdivisions (1)(a)(i) and (ii) of this section do not apply. The act shall, except as provided in subdivisions (1)(c) and (d) of this section, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides; or

(ii) Is not a resident, but only under the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by the act; and

(B) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

(c) The act shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state if the payee or beneficiary is afforded any coverage by the association of another state.

(d) The act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under the act is provided coverage under the laws of any other state, the person shall not be provided coverage under the act. In determining the application of the provisions of this subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, the act shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) The act shall provide coverage to the persons specified in subsection (1) of this section for direct nongroup life insurance, health insurance, which for purposes of the act includes health maintenance organization subscriber contracts and certificates, or annuity policies or contracts and supplemental contracts to any of these and for certificates under direct group policies and contracts, except as limited by the act. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

(b) The act shall not apply to:

(i) Any portion of any policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract holder;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract, except any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits, to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) On and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as described in 29 U.S.C. 1002(40);

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) A portion of a policy or contract to the extent that the assessments required by section 44-2708 with respect to the policy or contract are preempted by federal or state law;

(viii) An obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, contract holder, contract owner, or policy owner, including, without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form, filing, or approval requirements;

(C) Misrepresentations of or regarding policy or contract benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(ix) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

(x) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract or as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under the act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(xi) An unallocated annuity contract, a funding agreement, a guaranteed interest contract, a guaranteed investment contract, a synthetic guaranteed investment contract, or a deposit administration contract;

(xii) Any such policy or contract issued by:

(A) A hospital or medical service organization, whether profit or nonprofit;

(B) A fraternal benefit society;

(C) A mandatory state pooling plan;

(D) An unincorporated mutual association;

(E) An assessment association operating under Chapter 44 which issues only policies or contracts subject to assessment;

(F) An insurance exchange; or

(G) An organization that has a certificate or license limited to the issuance of charitable gift annuities;

(xiii) Any policy or contract issued by any person, corporation, or organization which is not licensed by the Department of Insurance under Chapter 44;

(xiv) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Title 42, Chapter 7, Subchapter XVIII, Part C or D, commonly known as Medicare Part C and D, or Title 42, Chapter 7, Subchapter XIX, commonly known as Medicaid, of the United States Code, any regulations issued pursuant thereto, or any other policy or contract issued pursuant to the Medical Assistance Act; or

(xv) A viatical settlement contract as defined in section 44-1102 or a viaticated policy as defined in section 44-1102.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In health insurance benefits: (I) Five hundred thousand dollars for health benefit plans; (II) three hundred thousand dollars for disability insurance or long-term care insurance as defined in section 44-4509. For purposes of this subdivision, disability insurance means the type of policy which pays a monthly or weekly amount if an individual is disabled and cannot work; and (III) one hundred thousand dollars for coverages not defined as disability insurance, long-term care insurance, or health benefit plans, including any net cash surrender and net cash withdrawal values; or

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) With respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in the present value of annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iii) The association shall not be obligated to cover more than:

(A) An aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivisions (3)(b)(i) and (ii) of this section, except that with respect to benefits for health benefit plans under subdivision (3)(b)(i)(B)(I) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or

(B) With respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits regardless of the number of policies and contracts held by the owner;

(iv) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under the act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights; and

(v) For purposes of the act, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(4) In performing its obligations to provide coverage under section 44-2707, the association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of the insolvent or impaired insurer under a

covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Source: Laws 1975, LB 217, § 3; Laws 1986, LB 593, § 5; Laws 2001, LB 360, § 15; Laws 2004, LB 1047, § 8; Laws 2012, LB887, § 17; Laws 2019, LB159, § 2.

Effective date March 13, 2019.

Cross References

Medical Assistance Act, see section 68-901.

44-2706 Board of directors; members; how selected; voting rights; represent insurers; expenses.

(1) The board of directors of the association shall consist of not less than seven nor more than eleven members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the director shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the director may appoint the initial members.

(2) In approving selections or in appointing members to the board, the director shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board as provided in sections 81-1174 to 81-1177 for state employees but shall not otherwise be compensated by the association for their services.

Source: Laws 1975, LB 217, § 6; Laws 1981, LB 204, § 72; Laws 2019, LB159, § 3.

Effective date March 13, 2019.

44-2707 Association; powers and duties; enumerated.

In addition to the powers and duties enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(1) If a member insurer is an impaired insurer, the association may, at its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the director:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all the covered policies or contracts of the impaired insurer; and

(b) Provide such money, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1)(a) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1)(a) of this section;

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the covered policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide such money, pledges, notes, guarantees, or other means as are reasonably necessary to discharge the association's duties; or

(b) Provide benefits in accordance with the following provisions:

(i) With respect to covered policies and contracts, assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under these policies or contracts or forty-five days but not less than thirty days after the date on which the association becomes obligated with respect to the policies and contracts; and

(B) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date if any under the policies or contracts or one year but not less than thirty days after the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds, enrollees, or annuitants, for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, thirty days' notice of the termination made pursuant to subdivision (2)(b)(i) of this section of the benefits provided;

(iii) With respect to nongroup policies and contracts covered by the association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured, enrolled, or an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(b)(iv) of this section if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class;

(iv)(A) In providing the substitute coverage required under subdivision (2)(b)(iii) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates, subject to the prior approval of the director.

(B) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(C) The association may reinsure any alternative or reissued policy or contract;

(v)(A) Alternative policies or contracts adopted by the association shall be subject to the approval of the director. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy or contract issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association;

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be actuarially justified and set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the director;

(vii) The association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy owner, the insured, the enrollee, or the association; and

(viii) When proceeding under subdivision (2)(b) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision (2)(b)(iii) of section 44-2703;

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under the act with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of the act;

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. If the liquidator of the insolvent insurer requests, the association shall provide a report to the liquidator regarding such premiums collected by the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order;

(5) The protection provided by the act shall not apply if guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state;

(6) In carrying out its duties under subdivision (2) of this section, the association may, subject to approval by a court in this state:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if:

(i) The association finds that the amounts which can be assessed under the act are less than the amounts needed to assure full and prompt performance of the association's duties under the act; or

(ii) That the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest; and

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts in addition to any contractual provisions for deferral of cash or policy loan value.

If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court;

(7) A deposit in this state which is held pursuant to law or required by the director for the benefit of creditors, including policy and contract owners, and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 44-4852, shall be promptly paid to the association. The association shall be entitled to retain a portion of such amount equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this state related to that insolvency. The association shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subdivision. Any amount paid to the association less the amount not retained by it shall be treated as a distribution of estate assets pursuant to section 44-4834 or similar provision of the state of domicile of the impaired or insolvent insurer;

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subdivision (2) of this section, the director shall have the powers and duties of the association under the act with respect to the insolvent insurer;

(9) At the request of the director, the association may give assistance and advice to the director concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer;

(10) The association shall have standing to appear before any court or administrative agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under the act or with jurisdiction over any person or property against which the association may have rights through subrogation or other basis. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts and contractual obligations

of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person against whom the association may have rights through subrogation or otherwise;

(11)(a) Any person receiving benefits under the act shall be deemed to have assigned his or her rights under and any causes of action against any person for losses arising under the covered policy or contract to the association to the extent of the benefits received because of the act whether the benefits are payments of, or on account of, contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights by any enrollee, payee, policy or contract owner, certificate holder, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by such act upon such person.

(b) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under such act.

(c) In addition to subdivisions (11)(a) and (b) of this section, the association shall have all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contracts. Such common-law rights and equitable or legal remedies include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to the act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor. Nothing in this subdivision shall include any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

(d) If the provisions of this subdivision are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts or portion of such amount covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in subdivision (11) of this section, the person shall pay to the association the portion of the recovery attributable to the policies or contracts or any portion of such recovery covered by the association;

(12) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the act;

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 44-2708 and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of the act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association and to perform such other functions as become necessary or proper under the act;

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims;

(g) Exercise, for the purposes of the act and to the extent approved by the director, the powers of a domestic life or health insurer or health maintenance organization, but in no case may the association issue insurance policies or contracts other than those issued to perform its obligations under the act;

(h) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(i) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under the act with respect to the person, and the person shall promptly comply with the request;

(j) Unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under the act;

(k) Take other necessary or appropriate action to discharge its duties and obligations under the act or to exercise its powers under the act; and

(l) Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association;

(13)(a) At any time within one hundred eighty days after the coverage date, the association may elect to succeed to the rights and obligations of the ceding member insurer that accrue on or after the coverage date and that relate to policies, contracts, or annuities covered, in whole or in part, by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. For purposes of this section, coverage date means the date on which the association becomes responsible for the obligations of a member insurer. The election shall be effected by the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, sending written notice, return receipt requested, to the affected reinsurers. To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, as soon as possible after commencement of formal delinquency proceedings copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts. If the association makes an election, subdivisions (13)(a)(i) through

(vi) of this section apply to the reinsurance contracts selected by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the coverage date and shall be responsible for the performance of all other obligations to be performed after the coverage date in each case that relates to policies, contracts, or annuities covered, either in whole or in part, by the association. The association may charge policies, contracts, or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the coverage date and that relate to policies, contracts, or annuities covered by the association, in whole or in part, except that on receiving such amounts, the association shall pay to the beneficiary under the policy, contract, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of: (A) The amount received by the association, and (B) the excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy, contract, or annuity, less the retention by the insurer applicable to the loss or event;

(iii) Within thirty days after the association's election, the association and each reinsurer under the contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election with respect to policies, contracts, or annuities covered, in whole or in part, by the association, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the reinsurer during the period between the coverage date and the date of the association's election. The association or reinsurer shall pay the net balance due the other within five days after the completion of such calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to subdivision (13)(a)(ii) of this section, the receiver, rehabilitator, or liquidator shall, as promptly as practicable, pay such amounts to the association. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law;

(iv) If the association, or receiver on behalf of the association, within sixty days after the election, pays the unpaid premiums due for periods both before and after the coverage date that relate to policies, contracts, or annuities covered by the association in whole or in part, the reinsurer shall not be entitled to terminate the reinsurance agreements for failure to pay premiums to the extent that the agreements relate to policies, contracts, or annuities covered by the association either wholly or partially and may not set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association;

(v) During the period from the coverage date until the election date or, if the election date does not occur, one hundred eighty days after the date of the order of liquidation, (A) neither the association nor the reinsurer shall have any

rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (13)(a) of this section, whether for periods prior to or after the date of the order of liquidation, and (B) the reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records upon reasonable request, provided that once the association has elected to assume a reinsurance contract, the rights and obligations of the parties shall be governed by subdivision (13)(a) of this section; and

(vi) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (13)(a) of this section, the association shall have no rights or obligations, in each case for periods both before and after the coverage date, with respect to the reinsurance contract;

(b) When policies, contracts, or annuities or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (13)(a) of this section, subject to the following:

(i) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(ii) The obligations described in subdivision (13)(a) of this section shall not apply on and after the date the reinsurance contract is transferred to the third party insurer; and

(iii) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer;

(c) The provisions of subdivision (13) of this section shall supersede the provisions of any law of this state or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds on account of losses or events that occur in periods after the coverage date to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as otherwise expressly set forth in subdivision (13) of this section, nothing in such subdivision shall alter or modify the terms and conditions of any reinsurance contract. Nothing in the subdivision shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in such subdivision shall give a policyowner, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks;

(14) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of the act in an economical and efficient manner;

(15) If the association has arranged or offered to provide the benefits of the act to a covered person under a plan or arrangement that fulfills the association's obligations under the act, such person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement; and

(16) Venue in an action against the association arising under the act shall be in the district court of Lancaster County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under the act.

Source: Laws 1975, LB 217, § 7; Laws 1986, LB 593, § 7; Laws 2001, LB 360, § 16; Laws 2003, LB 216, § 11; Laws 2019, LB159, § 4. Effective date March 13, 2019.

44-2708 Assessments against member insurers; procedure; effect; protest or appeal.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due, and the assessments shall accrue interest at the rate calculated pursuant to section 45-103 on and after the due date.

(2) There shall be two classes of assessments as follows:

(a) Class A assessments shall be authorized and called for the purpose of meeting administrative costs and other general expenses, including expenses for examinations conducted under the authority of subdivision (3) of section 44-2711. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under section 44-2707 with regard to an impaired or insolvent domestic insurer.

(3)(a) The amount of any Class A assessment for each account shall be determined by the board and may be authorized and called on a pro rata or non-pro-rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The amount of any Class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances. The amount of any Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the director. The methodology shall provide for fifty percent of the assessment to be allocated to accident and health member insurers and fifty percent to be allocated to life and annuity member insurers.

(b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account bears, for the three most recent calendar years for which information is

available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, to such premiums received on business in this state for such calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of the Nebraska Life and Health Insurance Guaranty Association Act. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth pursuant to this subsection, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a) Subject to the provisions of subdivision (b) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for the life insurance account, the annuity account, and the health account shall not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(b) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (a) of this subsection shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(c) If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year in an account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by the act.

(d) The board may provide in the plan of operation a method of allocating funds among other claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(e) If the maximum assessment for an account in one year does not provide an amount sufficient to carry out the responsibilities of the association, then the

board shall access the other accounts for the necessary additional amount, subject to the provisions of subdivision (5)(a) of this section.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers in proportion to the contribution of each insurer to that account the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance or health maintenance organization business within the scope of the act, to consider the amount reasonably necessary to meet its assessment obligations under the act.

(8) The association shall issue to each insurer paying a Class B assessment under the act a certificate of contribution in a form prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the director may approve.

(9)(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. A statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest shall accompany the payment.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days after receipt of notice of the final decision, the protesting member insurer may appeal that final action to the director.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the director for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section, and member insurers shall promptly comply with a request.

Source: Laws 1975, LB 217, § 8; Laws 1986, LB 593, § 8; Laws 2000, LB 930, § 7; Laws 2001, LB 360, § 17; Laws 2019, LB159, § 5.
Effective date March 13, 2019.

44-2709 Association; plan of operation; requirements.

(1)(a) The association shall submit to the director a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments shall become effective upon approval in writing by the director or, if it has not been disapproved by the director, thirty days after submission.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty days following August 24, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the Nebraska Life and Health Insurance Guaranty Association Act. Such rules and regulations shall continue in force until modified by the director or superseded by a plan submitted by the association and approved by the director.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated in the Nebraska Life and Health Insurance Guaranty Association Act:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under section 44-2706;

(c) Establish regular places and times for meetings of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors shall be made and submitted to the director;

(f) Establish any additional procedures for assessments pursuant to section 44-2708;

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

(h) Establish procedures whereby a member of the board of directors may be removed for cause including, but not limited to, instances in which a member insurer becomes an impaired or insolvent insurer; and

(i) Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (12)(c) of section 44-2707 and section 44-2708, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation made under this subsection shall take effect only with the approval of both the board of directors and the director and may be made only to a corporation, association, or organization which extends protection not

substantially less favorable and effective than that provided by the Nebraska Life and Health Insurance Guaranty Association Act.

Source: Laws 1975, LB 217, § 9; Laws 1986, LB 593, § 9; Laws 2001, LB 360, § 18; Laws 2019, LB159, § 6.
Effective date March 13, 2019.

44-2713 Impaired or insolvent insurer; effect; procedure.

(1) Nothing in the Nebraska Life and Health Insurance Guaranty Association Act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties pursuant to section 44-2707. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities as provided in section 44-2714.

(3) For the purpose of carrying out its obligations under the Nebraska Life and Health Insurance Guaranty Association Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision (11) of section 44-2707. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by the act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired or insolvent insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to shareholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act for any person to make use in any manner of the protection afforded by the Nebraska Life and Health Insurance Guaranty Association Act in the sale of insurance.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have

a right to recover on behalf of the insurer, from any affiliate, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (b), (c), and (d) of this subsection.

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions such person received. Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions such person would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer.

(e) If any person liable under subdivision (c) of this subsection is insolvent, all affiliates of such person at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Source: Laws 1975, LB 217, § 13; Laws 1986, LB 593, § 12; Laws 1989, LB 92, § 217; Laws 2001, LB 360, § 19; Laws 2019, LB159, § 7.
Effective date March 13, 2019.

Cross References

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

44-2718 Stay of proceedings against impaired insurer; purpose; association; apply to set aside judgment or defend.

All proceedings in which the impaired insurer is a party in any court in this state shall be stayed one hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits. Nothing in this section shall be deemed to limit the powers of a receiver appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, or to stay any proceeding brought pursuant to such act.

Source: Laws 1975, LB 217, § 18; Laws 2019, LB159, § 8.
Effective date March 13, 2019.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-2719.01 Using name of association; when prohibited.

No person, including an insurer, agent, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio station or television station, or in any other way any advertisement, announcement, or statement, written or oral, which uses the existence of the Nebraska Life and Health Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Nebraska Life and Health Insurance Guaranty Association Act, except that this section shall not apply to the Nebraska Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance or coverage by a health maintenance organization.

Source: Laws 1986, LB 593, § 14; Laws 2019, LB159, § 9.
Effective date March 13, 2019.

44-2719.02 Insurer under court order; provisions applicable; act; applicability.

(1) Any insurer under an order of liquidation, rehabilitation, or conservation on February 12, 1986, shall be subject to the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the day prior to February 12, 1986.

(2) Notwithstanding any other provision of law, the provisions of the Nebraska Life and Health Insurance Guaranty Association Act in effect on the date the association first becomes obligated for the policies or contracts of an insolvent or impaired member govern the association's rights or obligations to the policyowners, contract owners, or enrollees of the insolvent or impaired member insurer.

Source: Laws 1986, LB 593, § 15; Laws 2012, LB887, § 19; Laws 2019, LB159, § 10.
Effective date March 13, 2019.

ARTICLE 33

LEGAL SERVICE INSURANCE CORPORATIONS

Section

44-3302. Terms, defined.

44-3303. Insurance laws; situations; not applicable.

44-3302 Terms, defined.

As used in sections 44-3301 to 44-3327, unless the context otherwise requires:

- (1) Director shall mean the Director of Insurance;
- (2) Department shall mean the Department of Insurance;
- (3) Insurer shall mean any person, as defined in section 49-801, authorized to conduct an insurance business as an insurer in this state, including corporations organized under sections 44-3312 and 44-3313; and
- (4) Legal expense insurance shall mean the assumption of a contractual obligation to pay or reimburse for specified legal services or specified legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or

by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. Legal expense insurance includes arrangements that create reasonable expectations of enforceable rights, but does not include the provision of or reimbursement for legal services incidental to other insurance coverages. The payment of only an administrative fee to an attorney shall not be considered payment or reimbursement for specified legal services or specified legal expenses for the purposes of this definition.

Source: Laws 1979, LB 52, § 2; Laws 2019, LB26, § 1.
Effective date September 1, 2019.

44-3303 Insurance laws; situations; not applicable.

The insurance laws of this state, including sections 44-3301 to 44-3327, do not apply to:

(1) Retainer contracts made by attorneys at law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters;

(2) Plans providing no benefits other than consultation and advice in connection with or in combination with referral services;

(3) The furnishing of limited legal assistance on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, education, or similar relationship;

(4) The furnishing of legal assistance by labor unions and other employee organizations to their members in matters relating to employment or occupation;

(5) Employee welfare benefit plans to the extent that state laws are superseded by Section 514 of the Employee Retirement Income Security Act of 1974;

(6) Automobile club service contracts which supply incidental or limited legal services or reimbursement for legal services in automobile related matters; and

(7) Plans that do not include the assumption of risk or obligation to pay or reimburse for specified legal services or specified legal expenses. The payment of only an administrative fee to an attorney shall not be considered payment or reimbursement for specified legal services or a specified legal expense.

Source: Laws 1979, LB 52, § 3; Laws 2019, LB26, § 2.
Effective date September 1, 2019.

ARTICLE 50

CHILDREN OF NEBRASKA HEARING AID ACT

Section

44-5001. Act, how cited.

44-5002. Legislative findings and declarations.

44-5003. Terms, defined.

44-5004. Health insurance plan; coverage required; items and services; exemption from act.

44-5005. Rules and regulations.

44-5001 Act, how cited.

Sections 44-5001 to 44-5005 shall be known and may be cited as the Children of Nebraska Hearing Aid Act.

Source: Laws 2019, LB15, § 1.

Effective date September 1, 2019.

44-5002 Legislative findings and declarations.

The Legislature finds and declares that:

(1) For a child impacted by hearing loss, his or her ability to develop language can be improved by the consistent use of a hearing aid;

(2) Private insurance benefits for children's hearing aids will ultimately provide long-term savings to the State of Nebraska by decreasing the need for special education services and increasing the academic success of children impacted by hearing loss; and

(3) In the long-term, implementation of the Children of Nebraska Hearing Aid Act will allow those impacted by the act to be more competitive in the workforce and less dependent on assistance from the state and federal governments.

Source: Laws 2019, LB15, § 2.

Effective date September 1, 2019.

44-5003 Terms, defined.

For purposes of the Children of Nebraska Hearing Aid Act:

(1) Health insurance plan means a plan which includes dependent coverage for an insured child and which is delivered, issued for delivery, renewed, extended, or modified in this state. Health insurance plan includes any such group or individual sickness and accident insurance policy, health maintenance organization contract, subscriber contract, employee medical, surgical, or hospital care benefit plan, or self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan also includes any policy, contract, or plan offered or administered by the state or its political subdivisions. Health insurance plan does not include a group health plan offered by a small employer as defined in section 44-5260 or a policy providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, Medicare supplement coverage, long-term care coverage, or other limited-benefit coverage;

(2) Hearing aid means an ear level or bone conduction hearing device intended to aid or improve the sense of hearing for a person with a hearing impairment. The term includes all parts, replacement parts, parts for repair, tubing, and ear molds;

(3) Hearing impairment means a hearing impairment diagnosed by an otolaryngologist with an auditory assessment completed by a licensed audiologist; and

(4) Insured child means an individual who is covered by a health insurance plan and less than nineteen years of age.

Source: Laws 2019, LB15, § 3.

Effective date September 1, 2019.

44-5004 Health insurance plan; coverage required; items and services; exemption from act.

(1) Beginning January 1, 2020, except as provided in subsection (4) of this section and notwithstanding section 44-3,131, any health insurance plan delivered, issued for delivery, renewed, extended, or modified in this state shall provide coverage pursuant to the Children of Nebraska Hearing Aid Act to each insured child. Such coverage shall be subject to subsection (2) of this section and shall include, for each ear affected by a hearing impairment, the following items and services:

- (a) A hearing aid purchased from a licensed audiologist with the medical clearance from an otolaryngologist and costs related to dispensing such hearing aid;
- (b) Evaluation for a hearing aid;
- (c) Fitting of a hearing aid;
- (d) Programming of a hearing aid;
- (e) Probe microphone measurements for verification that hearing aid gain and output meet the prescribed targets;
- (f) Hearing aid repairs;
- (g) Follow-up adjustments, servicing, and maintenance of a hearing aid;
- (h) Ear mold impressions;
- (i) Ear molds; and
- (j) Auditory rehabilitation and training.

(2)(a) Except as otherwise provided in this subsection, the items and services listed in subsection (1) of this section shall be covered on a continual basis to the extent that benefits paid for such items and services during the immediately preceding forty-eight-month period have not exceeded three thousand dollars.

(b) Coverage pursuant to the act shall allow for the replacement of a hearing aid and the associated services within three months of the dispensing date if the hearing aid gain and output fail to meet prescribed targets or the hearing aid is unable to be repaired or adjusted. If an insured child uses a hearing aid on September 1, 2019, and the hearing aid has been deemed unrepairable or obsolete by the manufacturer of the device, the insured child shall be eligible to use the benefits required by the act towards the acquisition of a new hearing aid, parts, and associated services.

(c) Coverage provided to an insured child pursuant to the act shall be subject to the same deductible, copayment, and coinsurance as similar covered items and services under the health insurance plan.

(3) A health insurance plan shall not refuse or deny coverage, refuse to renew or reissue coverage, or terminate coverage for an individual with a hearing impairment who is less than nineteen years of age based on such hearing impairment.

(4) A health insurance plan shall be exempt from the act for a plan year if, using a calculation method approved by the Department of Insurance, the cost of coverage would likely exceed one percent of all premiums collected under such plan for such plan year.

Source: Laws 2019, LB15, § 4.

Effective date September 1, 2019.

44-5005 Rules and regulations.

The Department of Insurance may adopt and promulgate rules and regulations necessary to implement the Children of Nebraska Hearing Aid Act.

Source: Laws 2019, LB15, § 5.

Effective date September 1, 2019.

ARTICLE 55**SURPLUS LINES INSURANCE**

Section

- 44-5501. Act, how cited.
 44-5502. Terms, defined.
 44-5506.01. Nonadmitted insurer; certificate of authority; director; powers; provisions applicable.
 44-5507. Nonadmitted insurer; personal jurisdiction.
 44-5508. Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

44-5501 Act, how cited.

Sections 44-5501 to 44-5515 shall be known and may be cited as the Surplus Lines Insurance Act.

Source: Laws 1992, LB 1006, § 1; Laws 2007, LB117, § 21; Laws 2019, LB469, § 1.

Effective date September 1, 2019.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act, unless the context otherwise requires:

(1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(2) Control means:

(a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or

(b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

(3) Department means the Department of Insurance;

(4) Director means the Director of Insurance;

(5) Domestic surplus lines insurer means a nonadmitted insurer domiciled in this state that has a certificate of authority to operate as a domestic surplus lines insurer in the State of Nebraska issued as provided in section 44-5506.01;

(6)(a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (6)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (6)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (6)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) Beginning on the fifth occurrence of January 1 after July 21, 2011, and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (6)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

(7) Foreign, alien, admitted, and nonadmitted, when referring to insurers, have the same meanings as in section 44-103 but do not include a risk retention group as defined in 15 U.S.C. 3901(a)(4);

(8)(a) Except as provided in subdivision (8)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (8)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (8)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(9) Insurer has the same meaning as in section 44-103;

(10) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(11) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the

Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22; Laws 2011, LB70, § 1; Laws 2017, LB113, § 44; Laws 2019, LB469, § 2.
Effective date September 1, 2019.

44-5506.01 Nonadmitted insurer; certificate of authority; director; powers; provisions applicable.

(1) The director may provide written authority in the form of a certificate of authority to operate as a domestic surplus lines insurer in the State of Nebraska to a nonadmitted insurer domiciled in this state if the director determines that such nonadmitted insurer:

- (a) Possesses policyholder surplus of at least fifteen million dollars;
- (b) Is an eligible surplus lines insurer in at least one state jurisdiction other than this state; and
- (c) Is acting pursuant to a resolution passed by its board of directors seeking to be a domestic surplus lines insurer in this state.

(2) All financial and solvency requirements imposed by Chapter 44 upon a domestic admitted insurer shall apply to a domestic surplus lines insurer unless domestic surplus lines insurers are otherwise specifically exempted.

(3) Policies issued by a domestic surplus lines insurer are not subject to the protections or other requirements of the Nebraska Property and Liability Insurance Guaranty Association Act or the Nebraska Life and Health Insurance Guaranty Association Act.

Source: Laws 2019, LB469, § 3.
Effective date September 1, 2019.

Cross References

Nebraska Life and Health Insurance Guaranty Association Act, see section 44-2720.

Nebraska Property and Liability Insurance Guaranty Association Act, see section 44-2418.

44-5507 Nonadmitted insurer; personal jurisdiction.

Every nonadmitted insurer accepting business under the Surplus Lines Insurance Act shall be held to have sufficient contact with this state for the exercise of personal jurisdiction over such insurer (1) upon any cause of action arising out of any such transaction or (2) in any proceeding before the director under the act.

Source: Laws 1913, c. 154, § 25, p. 410; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 589; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-145; Laws 1978, LB 836, § 5; Laws 1983, LB 447, § 57; R.S.1943, (1988), § 44-145; Laws 1992, LB 1006, § 7; Laws 2019, LB469, § 4.
Effective date September 1, 2019.

44-5508 Surplus lines licensee; requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has deter-

mined that the nonadmitted insurer is a domestic surplus lines insurer or meets the following criteria:

- (a) Is authorized to write such insurance in its domiciliary jurisdiction;
- (b) Has established satisfactory evidence of good repute and financial integrity; and
- (c)(i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or
- (ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

(3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(4)(a) No nonadmitted foreign or alien insurer shall accept business under the Surplus Lines Insurance Act if it does not comply with the surplus and capital requirements of subsection (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall accept business under the act if it does not comply with the requirements of subsection (2) of this section.

Source: Laws 1913, c. 154, § 26, p. 410; R.S.1913, § 3162; Laws 1919, c. 190, tit. V, art. III, § 19, p. 589; C.S.1922, § 7763; C.S.1929, § 44-219; R.S.1943, § 44-147; Laws 1951, c. 135, § 2, p. 558; Laws 1971, LB 757, § 1; Laws 1977, LB 40, § 230; Laws 1978, LB 836, § 6; Laws 1989, LB 92, § 33; R.S.Supp.,1990, § 44-147; Laws 1992, LB 1006, § 8; Laws 1994, LB 978, § 31; Laws 2005, LB 119, § 21; Laws 2011, LB70, § 6; Laws 2019, LB469, § 5. Effective date September 1, 2019.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section

- 44-7508.02. Policy forms; filing; director; powers and duties.
- 44-7512. Repealed. Laws 2019, LB469, § 10.
- 44-7513. Policy form filings.
- 44-7514. Policy form approval requirements applying to qualifying multistate commercial policyholder; exemption.

44-7508.02 Policy forms; filing; director; powers and duties.

(1) For policy forms to which this section applies as provided in section 44-7508.01, each insurer shall file with the director every policy form and

related attachment rule and every modification thereof which it proposes to use. For policy forms to which this section applies, no insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (10) or (11) of this section, section 44-7514, or rules and regulations adopted and promulgated pursuant to section 44-7515.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives such filing.

(3) Every policy form filing shall explain the intended use of such policy form. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed so that such listings can be provided upon request.

(4) The director shall acknowledge receipt of a policy form filing as soon as practical. A review of the filing by the director is not required to issue this acknowledgment, and acknowledgment shall not constitute an approval by the director.

(5) The director may review a policy form filing at any time after it has been made. The director shall review a policy form filing for insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs, within thirty days after the filing has been made. Following such review, the director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(6) If, within thirty days after its receipt, the director disapproves a filing that requires disapproval pursuant to subsection (5) of this section, then a written disapproval notice shall be sent to the insurer. The disapproval notice shall specify in what respects the filing fails to meet these requirements. Upon receipt of the notice of disapproval, the insurer shall cease use of the filing as soon as practical but may use the form for policies that have already been issued or when pending coverage proposals are outstanding.

(7) If, within thirty days after its receipt, the director requests additional information to complete review of a policy form filing, the thirty-day review period allowed in subsection (6) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may disapprove the filing based on the insurer's failure to provide the requested information. Disapproval shall be by written notice sent to the insurer ordering discontinuance of the filing within thirty days after the date of notice.

(8) An insurer whose filing is disapproved pursuant to subsection (6) of this section may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(9) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(10)(a) Subject to the requirements of this subsection, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been filed with the director. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a single risk for a second risk if the policy form is filed within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rule and regulation or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use. Any such informational filings specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(11) The director may by rule and regulation suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the Property and Casualty Insurance Rate and Form Act.

(12) If, at any time after the expiration of the review period provided by subsection (6) of this section or any extension thereof, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of subsection (5) of this section, the director shall hold a hearing in accordance with section 44-7532.

(13) Any insured aggrieved with respect to any policy form filing subject to this section may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(14) If, after a hearing held pursuant to subsection (12) or (13) of this section, the director finds that a filing does not meet the requirements of subsection (5) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or

policy made or issued prior to the expiration of the period set forth in the order.

Source: Laws 2003, LB 216, § 21; Laws 2005, LB 119, § 27; Laws 2008, LB855, § 49; Laws 2019, LB469, § 6.
Effective date September 1, 2019.

44-7512 Repealed. Laws 2019, LB469, § 10.

44-7513 Policy form filings.

(1) Each insurer to which this section applies as provided in section 44-7508.01 shall file with the director every policy form and related attachment rule and every modification thereof which it proposes to use. No insurer to which this section applies shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act except as provided in subsection (6) or (7) of this section, section 44-7514, or rules and regulations adopted and promulgated pursuant to section 44-7515.

(2) Every filing shall state its proposed effective date, which shall not be prior to the date that the director receives the filing. Instead of a specific date, a filing may indicate that it will be effective a reasonable specified period of time after approval or that the insurer will notify the director of the effective date within ninety days after approval.

(3) Every policy form filing shall explain the intended use of such policy forms. Filings shall include a list of policy forms that will be replaced when the approval of a filing will result in the replacement of previously approved policy forms. In addition, insurers shall maintain listings of policy forms that have been filed and approved by the director so that such listings can be provided upon request.

(4) If additional information is needed to complete review of a policy form filing, the director may require the filer to furnish the information and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If a filer fails to furnish the required information within ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(5) An insurer may authorize the director to accept policy form filings made on its behalf by an advisory organization.

(6)(a) Subject to the following requirements, policy forms unique in character and designed for and used with regard to an individual risk under common ownership subject to the rate filing provisions of section 44-7508 shall be exempt from the approval requirements contained in subsection (1) of this section.

(b) At the earliest practical opportunity, but no later than thirty days after the effective date of the policy using unfiled provisions, the insurer shall provide the prospective insured with a written listing of the policy forms that have not been approved by the director and receive written acknowledgment from prospective insureds for which it ultimately provides coverage. This requirement does not apply to renewals using the same unfiled policy forms.

(c) A policy form that has been used in this state or elsewhere by the insurer for another risk shall not be subject to the exemption provided by this subsection, except that an insurer may use a policy form previously developed for a

single risk for a second risk if the policy form is filed for approval within sixty days after its second usage.

(d) The exemption provided by this subsection shall not apply to workers' compensation or excess workers' compensation insurance policy forms or to policy forms that, prior to their use by the insurer, had been filed by an advisory organization in this state or had been filed by the insurer in any jurisdiction, regardless of whether approval was received.

(e) The director may by rules and regulations or by order make specific restrictions relating to the exemption provided by this subsection and may require the informational filing of policy forms subject to such exemption within a reasonable time after their use.

(7) The director may by rules and regulations suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which policy forms cannot practicably be filed before they are used. The director may examine insurers as is necessary to ascertain whether any policy forms affected by such rules and regulations meet the standards contained in the act.

(8) No filing or any supporting information provided by an insurer pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the approval or disapproval of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been made. The director shall disapprove a filing that contains provisions, exceptions, or conditions that: (a) Are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy; (b) are written so as to encourage the misrepresentation of coverage; (c) fail to reasonably provide the general coverage for policies of that type; (d) fail to comply with the provisions or the intent of the laws of this state; or (e) would provide coverage contrary to the public interest.

(10) Within thirty days after receipt, the director shall approve filings that meet the requirements of the act, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer or advisory organization. A filing shall be deemed to meet the requirements of the act unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of the act, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and state that such filing shall not become effective.

(12) Filings shall become effective on their proposed effective date if approved or deemed approved on or before that date. Filings approved or deemed approved after their proposed effective dates shall become effective after notification by the insurer of a revised effective date, which shall not be prior to the date that the insurer mails the notification to the director. If an insurer fails to furnish a revised effective date within a reasonable period of time not less

than ninety days, the director may, by written notice sent to the insurer, deem the filing as withdrawn and not available for use.

(13) An insurer or advisory organization whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(14) If, at any time after approval, the director finds that a policy form, attachment rule, or modification thereof does not meet or no longer meets the requirements of the act, the director shall hold a hearing in accordance with section 44-7532.

(15) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(16) If, after a hearing initiated pursuant to subsection (14) or (15) of this section, the director finds that a filing does not meet the requirements of the act, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such policy form or attachment rule shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Source: Laws 2000, LB 1119, § 13; Laws 2002, LB 1139, § 53; Laws 2003, LB 216, § 22; Laws 2006, LB 875, § 12; Laws 2019, LB469, § 7.
Effective date September 1, 2019.

44-7514 Policy form approval requirements applying to qualifying multistate commercial policyholder; exemption.

(1) The policy form approval requirements set forth in section 44-7513 shall not apply to policies written for individual commercial risks of a qualifying multistate commercial policyholder. For the purposes of this section, a qualifying multistate commercial policyholder is an entity that meets the following qualifications:

(a) The policyholder is commercial in nature;

(b) If the policyholder is comprised of multiple corporations or other entities, there is common or majority ownership of each of the members by the same parent entity. Qualifying multistate commercial policyholder does not include franchise arrangements or other groups where individual members of the group are under different ownership; and

(c) The office with the largest number of the officers and senior management of the policyholder is located outside of Nebraska. If this criteria is not meaningful or is ambiguous for a policyholder, then the total premiums for lines of insurance subject to the Property and Casualty Insurance Rate and Form Act that are attributable to another jurisdiction must exceed those premiums attributable to Nebraska.

(2) Policy forms for commercial risks exempted by this section may include language that conflicts with sections 44-357, 44-358, and 44-501.02. If a conflict results between a policy form and the requirements of such sections, such sections shall apply.

(3) Policy forms for commercial risks exempted by this section may include language that conflicts with sections 44-349, 44-350, 44-501, 44-514 to 44-518, 44-520 to 44-523, and 44-6408 and the provision of section 44-601 that prohibits policies with a term longer than five years. If a conflict results between a policy form and the requirements of any of these sections, the language in the policy form shall apply to the extent that it is inconsistent with such sections.

(4) Except as set forth in subsections (2) and (3) of this section, the policy forms exempted from policy form approval requirements shall not violate any law of this state.

Source: Laws 2000, LB 1119, § 14; Laws 2019, LB469, § 8.
Effective date September 1, 2019.

CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

3. Installment Sales. 45-335 to 45-348.
6. Collection Agencies. 45-621.
7. Residential Mortgage Licensing. 45-702 to 45-737.

ARTICLE 3

INSTALLMENT SALES

Section

- 45-335. Terms, defined.
- 45-340. Contracts negotiated by mail; requirements.
- 45-346. License; application; contents; issuance; bond; fee; term; director; duties.
- 45-346.01. Licensee; move of main office; notice to director; maintain minimum net worth; bond.
- 45-348. License; renewal; licensee; duties; fee; voluntary surrender of license.

45-335 Terms, defined.

For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods means all personal property, except money or things in action, and includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services means work, labor, and services of any kind performed in conjunction with an installment sale but does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the

buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company means a person purchasing one or more installment contracts from one or more sellers. Sales finance company includes, but is not limited to, a financial institution or installment loan licensee, if so engaged;

(12) Department means the Department of Banking and Finance;

(13) Director means the Director of Banking and Finance;

(14) Financial institution has the same meaning as in section 8-101.03;

(15) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(16) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the buyer's unilateral

election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(17) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(18) Licensee means any person who obtains a license under the Nebraska Installment Sales Act;

(19) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity;

(20) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(21) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(22)(a) Control in the case of a corporation means (i) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (ii) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy.

(b) Control in the case of any other entity means (i) the power, directly or indirectly, to direct the management or policies of the entity, (ii) the contribution of twenty-five percent or more of the capital of the entity, or (iii) the right to receive, upon dissolution, twenty-five percent or more of the capital of the entity; and

(23) Branch office means any location, other than the main office location, at which the business of a licensee is to be conducted, including (a) any offices physically located in Nebraska, and (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents.

Source: Laws 1965, c. 266, § 1, p. 751; Laws 1965, c. 268, § 2, p. 757; Laws 1969, c. 379, § 1, p. 1340; Laws 1969, c. 380, § 1, p. 1343; Laws 1969, c. 381, § 1, p. 1345; Laws 1973, LB 455, § 1; Laws 1978, LB 373, § 1; Laws 1989, LB 94, § 1; Laws 1989, LB 681, § 16; Laws 1992, LB 269, § 1; Laws 2003, LB 217, § 34; Laws 2006, LB 876, § 25; Laws 2010, LB571, § 8; Laws 2011, LB77, § 1; Laws 2012, LB965, § 2; Laws 2016, LB778, § 4; Laws 2017, LB140, § 153; Laws 2019, LB355, § 2.

Operative date January 1, 2020.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-340 Contracts negotiated by mail; requirements.

Installment contracts negotiated and entered into by mail without personal solicitation by salespersons or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is

distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time-sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of the Nebraska Installment Sales Act shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 45-336 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 45-336, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

Source: Laws 1965, c. 268, § 7, p. 762; Laws 2007, LB124, § 32; Laws 2019, LB355, § 3.

Operative date January 1, 2020.

45-346 License; application; contents; issuance; bond; fee; term; director; duties.

(1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license, except that on or after January 1, 2020, a person is no longer required to obtain a new license for each place of business and may maintain a branch office or offices upon compliance with the act.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include, but not be limited to, (a) the applicant's name and any trade name or doing business as designation which the applicant intends to use in this state, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, (g) if the applicant is an individual, his or her social security number, and (h) audited financial statements showing a minimum net worth of one hundred thousand dollars.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars, and, if applicable, a one-hundred-dollar fee for each branch office listed in the application, and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

(5) An initial license shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

(8) If an applicant for a license under the act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34; Laws 2012, LB965, § 4; Laws 2016, LB778, § 5; Laws 2017, LB185, § 2; Laws 2019, LB355, § 4.
Operative date January 1, 2020.

45-346.01 Licensee; move of main office; notice to director; maintain minimum net worth; bond.

(1) A licensee may move its main office from one place to another without obtaining a new license if the licensee gives notice thereof to the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to such move.

(2) A licensee shall notify the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to the occurrence of any of the following:

(a) The establishment of a new branch office. Notice of each such establishment shall be accompanied by a fee of one hundred dollars and any processing fee allowed under subsection (2) of section 45-354;

(b) The relocation or closing of an existing branch office; or

(c) A change of name, trade name, or doing business as designation.

(3) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

Source: Laws 2007, LB124, § 35; Laws 2009, LB327, § 17; Laws 2012, LB965, § 5; Laws 2019, LB355, § 5.
Operative date January 1, 2020.

45-348 License; renewal; licensee; duties; fee; voluntary surrender of license.

(1) An installment sales license may be renewed annually on or before December 31 by paying to the director a fee of one hundred fifty dollars, plus one hundred dollars for each branch office, if applicable, and any processing fee allowed under subsection (2) of section 45-354 and by submitting such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The department shall cancel the license following such surrender.

(3) If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

Source: Laws 1965, c. 268, § 15, p. 765; Laws 2005, LB 533, § 48; Laws 2009, LB327, § 18; Laws 2012, LB965, § 6; Laws 2016, LB778, § 6; Laws 2019, LB355, § 6.
Operative date January 1, 2020.

ARTICLE 6

COLLECTION AGENCIES

Section

45-621. Nebraska Collection Agency Fund; created; use; investment; transfer.

45-621 Nebraska Collection Agency Fund; created; use; investment; transfer.

(1) All fees collected under the Collection Agency Act shall be remitted to the State Treasurer for credit to a special fund to be known as the Nebraska Collection Agency Fund. The board may use the fund as may be necessary for the proper administration and enforcement of the act. The fund shall be paid out only on proper vouchers approved by the board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer as provided by law. All fees and expenses of the Attorney General in representing the board pursuant to the act shall be paid out of such fund. Transfers from the fund to the Election Administration Fund, the Secretary of State Administration Cash Fund, or the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Collection Agency Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) On or before July 5, 2013, the State Treasurer shall transfer one hundred thousand dollars from the Nebraska Collection Agency Fund to the Election Administration Fund.

Source: Laws 1963, c. 500, § 25, p. 1603; Laws 1971, LB 53, § 2; R.S.1943, (1981), § 81-8,182; Laws 1984, LB 471, § 21; Laws 1989, LB 206, § 3; Laws 1993, LB 261, § 19; Laws 1994, LB 1066, § 31; Laws 2001, LB 541, § 3; Laws 2013, LB199, § 21; Laws 2019, LB298, § 14.
Effective date May 28, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 7

RESIDENTIAL MORTGAGE LICENSING

Section

45-702. Terms, defined.

45-705. License or registration required; application; fees; background investigation; registered agent.

45-727. Mortgage loan originator; license required; loan processor or underwriter; license required; temporary authority to act as mortgage loan originator; conditions.

45-734. Mortgage loan originator license; inactive status; duration; renewal; reactivation.

45-737. Mortgage banker; licensee; duties.

45-702 Terms, defined.

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of

securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

(6) Department means the Department of Banking and Finance;

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

(8) Director means the Director of Banking and Finance;

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the

expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Purchase-money mortgage means a mortgage issued to the borrower by the seller of the property as part of the purchase transaction;

(22) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(23) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(24) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(25) Registrant means a person registered pursuant to section 45-704;

(26) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(27) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(28) Reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real estate, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the residential real estate given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of section 45-702.01;

(29) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

(30) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; and

(31) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 121, § 274; Laws 1993, LB 217, § 1; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41; Laws 2008, LB851, § 19; Laws 2009, LB328, § 4; Laws 2010, LB892, § 4; Laws 2012, LB965, § 11; Laws 2019, LB258, § 15. Effective date March 8, 2019.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.

Nebraska Installment Loan Act, see section 45-1001.

45-705 License or registration required; application; fees; background investigation; registered agent.

(1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed as a mortgage banker, is registered with the department as provided in section 45-704, is licensed under the

Nebraska Installment Loan Act, or is otherwise exempt from the act pursuant to section 45-703.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on a form prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation which the applicant intends to use in this state, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, (g) if the applicant is an individual, his or her social security number, and (h) fingerprints of any principal officer, director, partner, member, or sole proprietor for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment. A post office box number may be provided in addition to the street address.

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (2) of section 45-748.

(5) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nationwide Mortgage Licensing System and Registry. If the applicant is a partnership, association, corporation, or other form of business organization, the director shall require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. Fingerprints of any principal officer, director, partner, member, or sole proprietor shall be submitted to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history record information check. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (2) of section 45-748, receipt of criminal history record information by a private person or entity is prohibited.

(6) In order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (5) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing

information to the United States Department of Justice or any other governmental agency.

(7) A license as a mortgage banker granted under the Residential Mortgage Licensing Act shall not be assignable.

(8) An application is deemed filed when accepted as substantially complete by the director.

Source: Laws 1989, LB 272, § 8; Laws 1995, LB 163, § 3; Laws 1997, LB 752, § 118; Laws 2003, LB 218, § 3; Laws 2005, LB 533, § 52; Laws 2007, LB124, § 42; Laws 2008, LB380, § 1; Laws 2009, LB328, § 7; Laws 2010, LB892, § 7; Laws 2019, LB355, § 7. Operative date September 1, 2019.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

45-727 Mortgage loan originator; license required; loan processor or underwriter; license required; temporary authority to act as mortgage loan originator; conditions.

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703 or, on or after November 24, 2019, unless having temporary authority under subsections (4) or (5) of this section, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(3) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

(4) Beginning November 24, 2019, upon becoming employed by a mortgage banker licensed in this state, an individual who is a registered mortgage loan originator shall be deemed to have temporary authority to act as a mortgage loan originator in this state for one hundred twenty days after submitting a mortgage loan originator application unless:

- (a) The individual withdraws his or her mortgage loan originator application;
- (b) The director denies the mortgage loan originator application;
- (c) The director grants the individual a mortgage loan originator license;

(d) The application remains incomplete more than one hundred twenty days after the application was submitted;

(e) The individual has had an application for a mortgage loan originator license denied, revoked, or suspended at any time in any governmental jurisdiction;

(f) The individual has been subject to, or served with, a cease and desist order in any governmental jurisdiction;

(g) The individual has been convicted of a misdemeanor or felony that precludes licensure under the act; or

(h) The individual was not a registered mortgage loan originator for at least one year prior to application under the act.

(5) Beginning November 24, 2019, an individual who is a licensed mortgage loan originator in another state employed by a mortgage banker licensed in this state shall be deemed to have temporary authority to act as a mortgage loan originator in this state for one hundred twenty days after submitting a mortgage loan originator application unless:

(a) The individual withdraws his or her mortgage loan originator application;

(b) The director denies the mortgage loan originator application;

(c) The director grants the individual a mortgage loan originator license;

(d) The application remains incomplete more than one hundred twenty days after the application was submitted;

(e) The individual has had an application for a mortgage loan originator license denied, revoked, or suspended at any time in any governmental jurisdiction;

(f) The individual has been subject to, or served with, a cease and desist order in any governmental jurisdiction;

(g) The individual has been convicted of a misdemeanor or felony that precludes licensure under the act; or

(h) The individual has not been a licensed mortgage loan originator in another state for at least thirty days prior to application under the act.

(6) Beginning November 24, 2019, any person employing an individual who is deemed to have temporary authority to act as a mortgage loan originator in this state, and any individual who is deemed to have temporary authority to act as a mortgage loan originator in this state, shall be subject to the requirements of the act to the same extent as if that individual was a licensed mortgage loan originator under the act.

Source: Laws 2009, LB328, § 12; Laws 2013, LB290, § 2; Laws 2019, LB355, § 8.

Operative date September 1, 2019.

45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the

mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) Except as provided in subsection (5) of this section, a mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) A mortgage loan originator who holds an inactive mortgage loan originator license that has been renewed one time may not renew such inactive license for a second annual licensing period unless (a) the inactive license was reactivated after such inactive license was renewed or (b) the mortgage loan originator demonstrates good cause to the director to allow renewal of the inactive license for an additional annual licensing period.

(6) The department has the authority to reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator meets the conditions for licensing at the time the reactivation notice is received, including, but not limited to, coverage by a surety bond pursuant to subdivision (1)(f) of section 45-729.

Source: Laws 2009, LB328, § 19; Laws 2012, LB965, § 17; Laws 2019, LB355, § 9.

Operative date September 1, 2019.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Record or cause to be recorded a release of mortgage pursuant to the provisions of section 76-2803 or, in the case of a trust deed, record or cause to be recorded a reconveyance pursuant to the provisions of section 76-2803;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of five years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

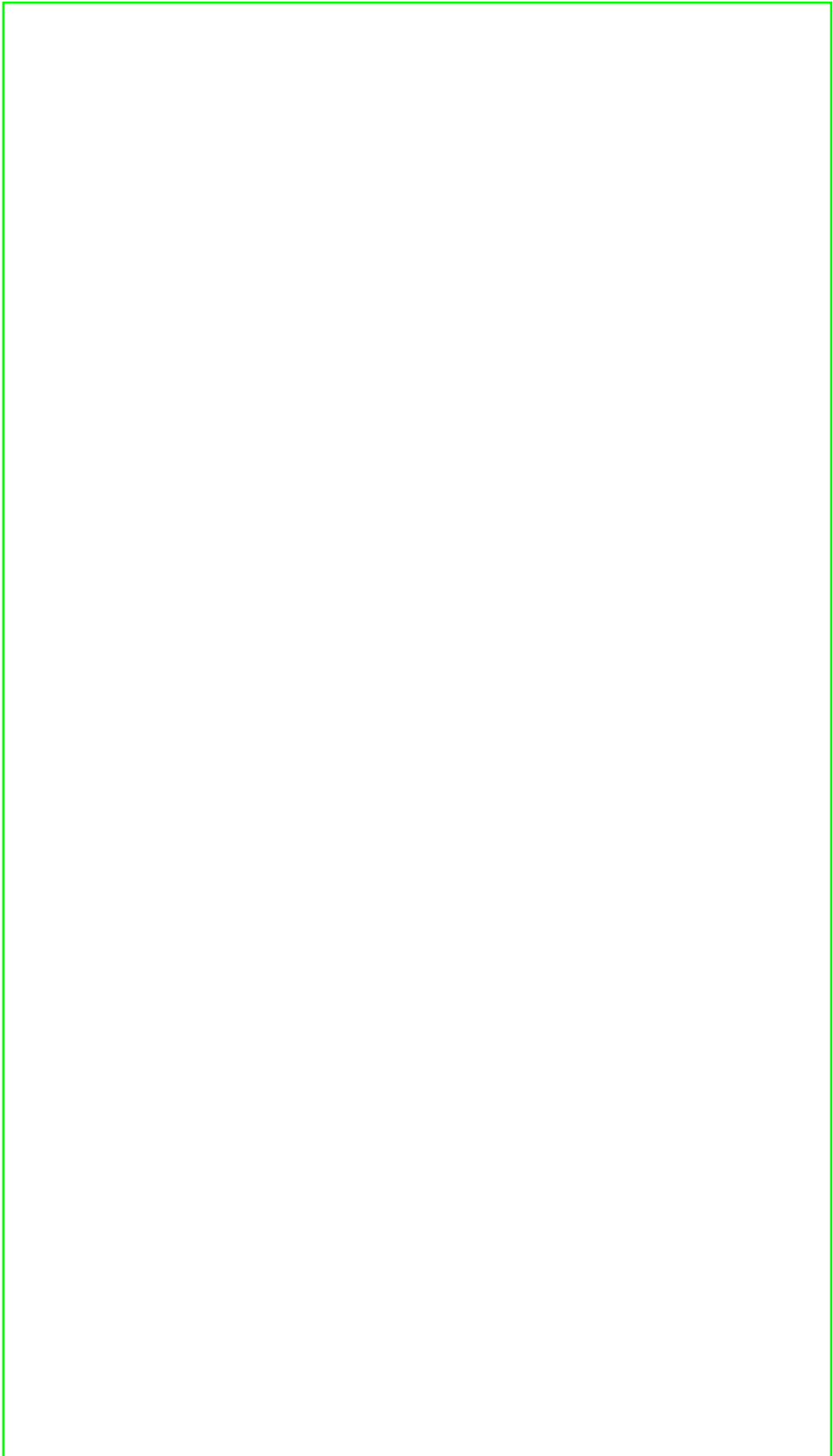
(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4; Laws 2015, LB352, § 2; Laws 2018, LB750, § 1; Laws 2019, LB355, § 10. Operative date September 1, 2019.



CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

2. General Provisions.
 - (e) Adjudication of Water Rights. 46-229.04.
 - (n) Instream Appropriations. 46-2,109.
 - (q) Storm Water Management Plan Program. 46-2,139.
6. Ground Water.
 - (a) Registration of Water Wells. 46-602, 46-606.
 - (g) Industrial Ground Water Regulatory Act. 46-683.01.
7. Nebraska Ground Water Management and Protection Act. 46-704 to 46-753.
11. Chemigation. 46-1102 to 46-1109.
12. Water Well Standards and Contractors' Licensing. 46-1217, 46-1224.
13. Water Quality Monitoring. 46-1301, 46-1304.
15. Wellhead Protection Area Act. 46-1502.
16. Safety of Dams and Reservoirs Act. 46-1642.

ARTICLE 2

GENERAL PROVISIONS

(e) ADJUDICATION OF WATER RIGHTS

Section

46-229.04. Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(n) INSTREAM APPROPRIATIONS

46-2,109. Streams with need for instream flows; identification; study.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environment and Energy; duties.

(e) ADJUDICATION OF WATER RIGHTS

46-229.04 Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(1) At a hearing held pursuant to section 46-229.03, the verified field investigation report of an employee of the department, or such other report or information that is relied upon by the department to reach the preliminary determination of nonuse, shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if:

(a) Such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined by the department to be fully appropriated pursuant to section 46-714, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation; or

(b) The land subject to the appropriation is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal, state, or natural resources district program, or such land was previously under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on such land subsequent to when that land was last under such program.

(3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

(a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;

(b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or

(c) The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

(a) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(b) Use of the water was unnecessary because of climatic conditions;

(c) Circumstances were such that a prudent person, following the principles of good husbandry, would not have been expected to use the water;

(d) The works, diversions, or other facilities essential to use the water were destroyed by a cause not within the control of the owner of the appropriation and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

(e) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or

(f) Legal proceedings prevented or restricted use of the water.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, a reclamation district, a public power and irrigation district, a mutual irrigation company or canal company, or the United States Bureau of Reclamation and

the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination, or five years after an order of cancellation issued by the department following the filing of a voluntary relinquishment of the water appropriation that has been signed by the landowner and the appropriator of record, to assign the right to use that portion of the appropriation to other land within the district or the area served by the company, to file an application for a transfer in accordance with section 46-290, or to transfer the right in accordance with sections 46-2,127 to 46-2,129. The department shall issue its order of cancellation within sixty days after receipt of the voluntary relinquishment unless the relinquishment is conditioned by the landowner upon an action of a governmental agency. If the relinquishment contains such a provision, the department shall issue its order of cancellation within sixty days after receipt of notification that such action has been completed. The department shall be notified of any such assignment within thirty days after such assignment. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 46-229.06.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The right to reinstate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinstated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(5), p. 521; Laws 1973, LB 186, § 6; Laws 1983, LB 380, § 3; Laws 1987, LB 140, § 4; Laws 1987, LB 356, § 1; Laws 1995, LB 350, § 3; Laws 2000, LB 900, § 100; Laws 2004, LB

962, § 9; Laws 2006, LB 1226, § 9; Laws 2007, LB701, § 15; Laws 2019, LB48, § 1.
Effective date September 1, 2019.

(n) INSTREAM APPROPRIATIONS

46-2,109 Streams with need for instream flows; identification; study.

Each natural resources district and the Game and Parks Commission shall conduct studies to identify specific stream segments which the district or commission considers to have a critical need for instream flows. Such studies shall quantify the instream flow needs in the identified stream segments. Any district or the Game and Parks Commission may request the assistance of the Conservation and Survey Division of the University of Nebraska, the Game and Parks Commission, the Department of Environment and Energy, the Department of Natural Resources, or any other state agency in order to comply with this section.

Source: Laws 1984, LB 1106, § 25; Laws 1985, LB 102, § 14; Laws 1993, LB 3, § 6; Laws 2000, LB 900, § 141; Laws 2019, LB302, § 20.
Operative date July 1, 2019.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environment and Energy; duties.

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environment and Energy, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 77 Federal Register 18652-18669, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 77 Federal Register 18652-18669, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1; Laws 2014, LB683, § 1; Laws 2019, LB302, § 21.
Operative date July 1, 2019.

ARTICLE 6 GROUND WATER

(a) REGISTRATION OF WATER WELLS

Section

46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

46-606. Water wells; registration fees; disposition.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01. Permit; application to amend; procedures; limitation.

(a) REGISTRATION OF WATER WELLS

46-602 Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

(1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The licensed water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide licensed water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the online services for such registration. Any discount in the amount paid the state by a credit card, charge

card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the licensed water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the licensed pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registra-

tion form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) water wells constructed as part of remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environment and Energy.

(6) The Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The licensed water well contractor or licensed pump installation contractor responsible therefor shall notify the department within sixty days on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the licensed water well contractor or licensed pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department within sixty days on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Practice Act. The licensed water well contractor who decommissions the water well, the licensed pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which

more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a licensed water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells described in subdivision (1)(b) of section 46-601.01 which were constructed prior to May 2, 2007, shall be registered within one hundred eighty days after such date.

Source: Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 310, § 42; Laws 1986, LB 886, § 1; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2; Laws 2006, LB 1226, § 15; Laws 2007, LB296, § 202; Laws 2007, LB463, § 1140; Laws 2007, LB701, § 18; Laws 2019, LB302, § 22.
Operative date July 1, 2019.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Old wells not in use, duty to fill or decommission, see sections 54-311 and 54-315.

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

46-606 Water wells; registration fees; disposition.

(1) The Director of Natural Resources shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each water well registered under section 46-602 except as provided in subsections (2) through (5) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first ten such water wells registered under section 46-602, and for each group

of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224.

(3) For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the director shall collect in advance a fee of forty dollars for each such series and the fee required by subsection (3) of section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by subsection (3) of section 46-1224 shall be collected.

(5)(a) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first two such wells registered under section 46-602.

(b) Any additional water wells which are part of a series registered under this subsection shall not be subject to a new well registration fee.

(6) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. From the registration fees required by subsections (1) through (5) of this section, the State Treasurer shall credit to the Department of Natural Resources Cash Fund the amount determined by the Department of Natural Resources to be necessary to pay for the costs of processing notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of the registration fees required by subsections (1) through (5) of this section to the Water Well Decommissioning Fund. The State Treasurer shall credit the fees required by subsection (3) of section 46-1224 to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1957, c. 200, § 6, p. 703; Laws 1986, LB 886, § 4; Laws 1986, LB 310, § 43; Laws 1993, LB 131, § 6; Laws 1994, LB 981, § 7; Laws 1999, LB 92, § 3; Laws 2000, LB 900, § 172; Laws 2001, LB 667, § 6; Laws 2002, LB 458, § 3; Laws 2003, LB 31, § 1; Laws 2003, LB 242, § 6; Laws 2019, LB302, § 23.
Operative date July 1, 2019.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-683.01 Permit; application to amend; procedures; limitation.

If during construction or operation a permit holder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set forth in the permit, the permit holder may file an application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit, except for an amendment to increase the maximum daily volumetric flow rate or annual volume to levels authorized under a permit issued by the Department of Environment and Energy pursuant to section 81-1504 and subsection (9) of section 81-1505.

Source: Laws 1986, LB 309, § 3; Laws 2012, LB498, § 1; Laws 2019, LB302, § 24.

Operative date July 1, 2019.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section

- 46-704. Management area; legislative findings.
- 46-705. Act; how construed.
- 46-706. Terms, defined.
- 46-707. Natural resources district; powers; enumerated; fee.
- 46-711. Ground water management plan; director; review; duties.
- 46-721. Contamination; reports required.
- 46-722. Contamination; Department of Environment and Energy; conduct study; when; report.
- 46-723. Contamination; point source; Director of Environment and Energy; duties.
- 46-724. Contamination; not point source; Director of Environment and Energy; duties; hearing; notice.
- 46-725. Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order.
- 46-726. Management area; contamination; action plan; preparation by district; when; hearing; notice; publication.
- 46-728. Management area; contamination; adoption or amendment of action plan; considerations; procedures.
- 46-729. Management area; contamination; action plan; district publish order adopted.
- 46-730. Management area; action plan; district; duties.
- 46-731. Management area; action plan; director specify controls; when; powers and duties; hearing.
- 46-732. Action plan; controls; duration; amendment of plan.
- 46-733. Removal of designation management area or requirement of action plan; modification of boundaries; when.
- 46-743. Public hearing; requirements.
- 46-749. Administration of act; compliance with other laws.
- 46-750. Appeal; procedure.
- 46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.

46-704 Management area; legislative findings.

The Legislature also finds that:

(1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;

(2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;

(3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;

(4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environment and Energy should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environment and Energy should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

Source: Laws 1986, LB 894, § 1; Laws 1993, LB 3, § 14; R.S.1943, (1993), § 46-674.02; Laws 1996, LB 108, § 9; R.S.1943, (1998), § 46-656.03; Laws 2004, LB 962, § 44; Laws 2019, LB302, § 25. Operative date July 1, 2019.

46-705 Act; how construed.

Nothing in the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services provided in the Nebraska Safe Drinking Water Act.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environment and Energy provided in Chapter 81, article 15.

Source: Laws 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261; R.S.1943, (1998), § 46-656.04; Laws 2004, LB 962, § 45; Laws 2007, LB296, § 203; Laws 2019, LB302, § 26. Operative date July 1, 2019.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

46-706 Terms, defined.

For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

(1) Person means a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(2) Ground water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Contamination or contamination of ground water means nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(4) District means a natural resources district operating pursuant to Chapter 2, article 32;

(5) Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(6) To commence construction of a water well means the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(7) Management area means any area so designated by a district pursuant to section 46-712 or 46-718, by the Director of Environment and Energy pursuant to section 46-725, or by the Interrelated Water Review Board pursuant to section 46-719. Management area includes a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to section 46-711;

(9) Ground water reservoir life goal means the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

(10) Board means the board of directors of a district;

(11) Acre-inch means the amount of water necessary to cover an acre of land one inch deep;

(12) Subirrigation or subirrigated land means the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(13) Best management practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(14) Point source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete

fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environment and Energy has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(15) Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(16) Rotation means a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(17) Water well has the same meaning as in section 46-601.01;

(18) Surface water project sponsor means an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6;

(19) Beneficial use means that use by which water may be put to use to the benefit of humans or other species;

(20) Consumptive use means the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made;

(21) Dewatering well means a well constructed and used solely for the purpose of lowering the ground water table elevation;

(22) Emergency situation means any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, district, or organization responsible for regulating water use from such source reasonably and in good faith believes that such use is necessary to protect the public health, safety, and welfare, including, if applicable, compliance with federal or state water quality standards;

(23) Good cause shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the granting agency, district, or organization reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought;

(24) Historic consumptive use means the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

(25) Monitoring well means a water well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for consumptive use;

(26) Order, except as otherwise specifically provided, includes any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation, or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board;

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 46-713 to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 46-714;

(28) Test hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions;

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable;

(30) Certified irrigated acres means the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district; and

(31) Certified water uses means beneficial uses of ground water for purposes other than irrigation identified by a district pursuant to rules adopted by the district.

Source: Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9; Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1; Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2; Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5; Laws 1986, LB 894, § 21; Laws 1991, LB 51, § 1; Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279; Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1; Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657; Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190; Laws 2001, LB 135, § 1; Laws 2003, LB 93, § 1; R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46; Laws 2006, LB 1226, § 21; Laws 2009, LB477, § 4; Laws 2009, LB483, § 2; Laws 2019, LB302, § 27.

Operative date July 1, 2019.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-707 Natural resources district; powers; enumerated; fee.

(1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT § 46-707

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environment and Energy on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) Issue cease and desist orders, following three days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

(3) In addition to the powers enumerated in subsections (1) and (2) of this section, a district may assess a fee against a person requesting a variance to cover the administrative cost of consideration of the variance, including, but not limited to, costs of copying records and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14;

R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5; Laws 2012, LB743, § 1; Laws 2014, LB513, § 1; Laws 2019, LB302, § 28.
Operative date July 1, 2019.

46-711 Ground water management plan; director; review; duties.

(1) The Director of Natural Resources shall review any ground water management plan or plan modification submitted by a district to ensure that the best available studies, data, and information, whether previously existing or newly initiated, were utilized and considered and that such plan is supported by and is a reasonable application of such information. If a management area is proposed and the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environment and Energy regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her specific findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

(2) If the Director of Natural Resources disapproves a ground water management plan, the district which submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 46-712.

Source: Laws 1982, LB 375, § 5; Laws 1986, LB 894, § 27; Laws 1993, LB 3, § 12; R.S.1943, (1993), § 46-673.03; Laws 1996, LB 108, § 20; Laws 2000, LB 900, § 192; R.S.Supp.,2002, § 46-656.14; Laws 2004, LB 962, § 51; Laws 2019, LB302, § 29.
Operative date July 1, 2019.

46-721 Contamination; reports required.

Each state agency and political subdivision shall promptly report to the Department of Environment and Energy any information which indicates that contamination is occurring.

Source: Laws 1986, LB 894, § 2; Laws 1993, LB 3, § 15; R.S.1943, (1993), § 46-674.03; Laws 1996, LB 108, § 41; R.S.1943, (1998), § 46-656.35; Laws 2004, LB 962, § 61; Laws 2019, LB302, § 30.
Operative date July 1, 2019.

46-722 Contamination; Department of Environment and Energy; conduct study; when; report.

If, as a result of information provided pursuant to section 46-721 or studies conducted by or otherwise available to the Department of Environment and Energy and following preliminary investigation, the Director of Environment and Energy makes a preliminary determination (1) that there is reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future and (2) that the natural resources district or districts in which the area is located have not designated a

management area or have not implemented adequate controls to prevent such contamination from occurring, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. During the study, the department shall consider the relevant water quality portions of the management plan developed by each district pursuant to sections 46-709 to 46-711, whether the district has designated a management area encompassing the area studied, and whether the district has adopted any controls for the area.

Source: Laws 1986, LB 894, § 3; Laws 1993, LB 3, § 16; R.S.1943, (1993), § 46-674.04; Laws 1996, LB 108, § 42; R.S.1943, (1998), § 46-656.36; Laws 2004, LB 962, § 62; Laws 2019, LB302, § 31. Operative date July 1, 2019.

46-723 Contamination; point source; Director of Environment and Energy; duties.

If the Director of Environment and Energy determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

Source: Laws 1986, LB 894, § 4; Laws 1993, LB 3, § 17; R.S.1943, (1993), § 46-674.05; Laws 1996, LB 108, § 43; R.S.1943, (1998), § 46-656.37; Laws 2004, LB 962, § 63; Laws 2019, LB302, § 32. Operative date July 1, 2019.

Cross References

Environmental Protection Act, see section 81-1532.

46-724 Contamination; not point source; Director of Environment and Energy; duties; hearing; notice.

If the Director of Environment and Energy determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environment and Energy shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-725 to 46-729.

If the Director of Environment and Energy determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-722, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environment and Energy as he or she deems necessary, the director shall determine whether a management area shall be designated.

Source: Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9; Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06; Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260; Laws 2000, LB 900, § 201; R.S.Supp.,2002, § 46-656.38; Laws 2004, LB 962, § 64; Laws 2007, LB296, § 204; Laws 2019, LB302, § 33.
Operative date July 1, 2019.

46-725 Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order.

(1) When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environment and Energy shall consider:

(a) Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;

(b) Whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water;

(c) Whether methods are available to stabilize or reduce the level of contamination;

(d) Whether, if a management area has been established which includes the affected area, the controls adopted by the district pursuant to section 46-739 as administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and

(e) Administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environment and Energy determines that no such area should be established, he or she shall issue an order declaring that no management area shall be designated.

(3) If the Director of Environment and Energy determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environment and Energy shall include the specific reasons for the creation of

the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined or modified, the Director of Environment and Energy shall issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area. Such order shall be published in the manner provided in section 46-744.

Source: Laws 1986, LB 894, § 6; Laws 1991, LB 51, § 10; Laws 1993, LB 3, § 19; R.S.1943, (1993), § 46-674.07; Laws 1996, LB 108, § 45; R.S.1943, (1998), § 46-656.39; Laws 2004, LB 962, § 65; Laws 2019, LB302, § 34.

Operative date July 1, 2019.

46-726 Management area; contamination; action plan; preparation by district; when; hearing; notice; publication.

(1) Within one hundred eighty days after the designation of a management area or the requiring of an action plan for a management area, a purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environment and Energy. Notice of the district's order adopting an action plan shall be published as required by section 46-744.

Source: Laws 1986, LB 894, § 7; Laws 1991, LB 51, § 11; R.S.1943, (1993), § 46-674.08; Laws 1996, LB 108, § 46; Laws 2000, LB 900, § 202; R.S.Supp.,2002, § 46-656.40; Laws 2004, LB 962, § 66; Laws 2019, LB302, § 35.

Operative date July 1, 2019.

46-728 Management area; contamination; adoption or amendment of action plan; considerations; procedures.

(1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environment and Energy shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after

the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If the director denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days after denial of its original action plan to the director for approval subject to section 46-731.

Source: Laws 1986, LB 894, § 9; Laws 1991, LB 51, § 13; Laws 1993, LB 3, § 20; R.S.1943, (1993), § 46-674.10; Laws 1996, LB 108, § 48; R.S.1943, (1998), § 46-656.42; Laws 2004, LB 962, § 68; Laws 2019, LB302, § 36.

Operative date July 1, 2019.

46-729 Management area; contamination; action plan; district publish order adopted.

Following approval of the action plan by the Director of Environment and Energy, the district shall cause a copy of the order adopted pursuant to section 46-728 to be published in the manner provided in section 46-744.

Source: Laws 1986, LB 894, § 10; Laws 1993, LB 3, § 21; R.S.1943, (1993), § 46-674.11; Laws 1996, LB 108, § 49; R.S.1943, (1998), § 46-656.43; Laws 2004, LB 962, § 69; Laws 2019, LB302, § 37.
Operative date July 1, 2019.

46-730 Management area; action plan; district; duties.

Each district in which a management area has been designated or an action plan for a management area has been required pursuant to section 46-725 shall, in cooperation with the Department of Environment and Energy, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

Source: Laws 1986, LB 894, § 17; Laws 1991, LB 51, § 16; Laws 1993, LB 3, § 27; R.S.1943, (1993), § 46-674.18; Laws 1996, LB 108, § 50; R.S.1943, (1998), § 46-656.44; Laws 2004, LB 962, § 70; Laws 2019, LB302, § 38.

Operative date July 1, 2019.

46-731 Management area; action plan; director specify controls; when; powers and duties; hearing.

(1) The power to specify controls authorized by section 46-739 shall vest in the Director of Environment and Energy if (a) at the end of one hundred eighty days following the designation of a management area or the requiring of an action plan for a management area pursuant to section 46-725, a district encompassed in whole or in part by the management area has not completed and adopted an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the director.

(2) If the power to specify controls in such a management area is vested in the Director of Environment and Energy, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-743. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Environment and Energy.

Source: Laws 1986, LB 894, § 11; Laws 1991, LB 51, § 14; Laws 1993, LB 3, § 22; R.S.1943, (1993), § 46-674.12; Laws 1996, LB 108, § 51; R.S.1943, (1998), § 46-656.45; Laws 2004, LB 962, § 71; Laws 2019, LB302, § 39.
Operative date July 1, 2019.

46-732 Action plan; controls; duration; amendment of plan.

The controls in the action plan approved by the Director of Environment and Energy pursuant to section 46-728 shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

Source: Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.46; Laws 2004, LB 962, § 73; Laws 2019, LB302, § 40.
Operative date July 1, 2019.

46-733 Removal of designation management area or requirement of action plan; modification of boundaries; when.

A district may petition the Director of Environment and Energy to remove the director's designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section 46-725. If the director determines that the level of contamination in a management area has stabilized at or been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

Source: Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.47; Laws 2004, LB 962, § 73; Laws 2019, LB302, § 41.
Operative date July 1, 2019.

46-743 Public hearing; requirements.

Any public hearing required under the Nebraska Ground Water Management and Protection Act shall comply with the following requirements:

(1) The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area or affected by the proposed rule or regulation;

(2) Notice of the hearing shall be published in a newspaper published or of general circulation in the affected area at least once each week for three consecutive weeks, the last publication of which shall be not less than seven days prior to the hearing;

(3) As to the designation of a management area, adoption or amendment of an action plan or integrated management plan, or adoption or amendment of controls, the notice shall provide, as applicable, a general description of (a) the contents of the plan, (b) the geographic area which will be considered for inclusion in the management area, and (c) a general description of all controls proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed plan or controls may be obtained;

(4) For all other rules and regulations, the notice shall provide a general description of the contents of the rules and regulations proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed rules and regulations may be obtained;

(5) The full text of all controls, rules, or regulations shall be available to the public upon request not later than the date of first publication;

(6) All interested persons shall be allowed to appear and present testimony; and

(7) The hearing shall include testimony of a representative of the Department of Natural Resources and, if the primary purpose of the proposed management area is protection of water quality, testimony of a representative of the Department of Environment and Energy and shall include the results of any relevant water quality studies or investigations conducted by the district.

Source: Laws 2004, LB 962, § 83; Laws 2019, LB302, § 42.
Operative date July 1, 2019.

46-749 Administration of act; compliance with other laws.

In the administration of the Nebraska Ground Water Management and Protection Act, all actions of the Director of Environment and Energy, the Director of Natural Resources, and the districts shall be consistent with the provisions of section 46-613.

Source: Laws 1975, LB 577, § 16; Laws 1984, LB 1071, § 13; R.S.1943, (1993), § 46-671; Laws 1996, LB 108, § 71; Laws 2000, LB 900, § 217; R.S.Supp.,2002, § 46-656.65; Laws 2004, LB 962, § 89; Laws 2019, LB302, § 43.
Operative date July 1, 2019.

46-750 Appeal; procedure.

Any person aggrieved by any order of the district, the Director of Environment and Energy, or the Director of Natural Resources issued pursuant to the Nebraska Ground Water Management and Protection Act may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1975, LB 577, § 14; Laws 1984, LB 1071, § 11; Laws 1988, LB 352, § 78; R.S.1943, (1993), § 46-669; Laws 1996, LB 108, § 72; Laws 2000, LB 900, § 218; R.S.Supp.,2002, § 46-656.66; Laws 2004, LB 962, § 90; Laws 2019, LB302, § 44.
Operative date July 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

46-753 Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be administered by the department. The department may adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3; Laws 2019, LB319, § 2.
Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**ARTICLE 11
CHEMIGATION**

Section

- 46-1102. Legislative findings.
46-1108. Department, defined.
46-1109. Director, defined.

46-1102 Legislative findings.

The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water.

The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environment and Energy with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

Source: Laws 1986, LB 284, § 2; Laws 1993, LB 3, § 28; Laws 2019, LB302, § 45.
Operative date July 1, 2019.

46-1108 Department, defined.

Department shall mean the Department of Environment and Energy.

Source: Laws 1986, LB 284, § 8; Laws 1993, LB 3, § 30; Laws 2019, LB302, § 46.
Operative date July 1, 2019.

46-1109 Director, defined.

Director shall mean the Director of Environment and Energy.

Source: Laws 1986, LB 284, § 9; Laws 1993, LB 3, § 31; Laws 2019, LB302, § 47.
Operative date July 1, 2019.

ARTICLE 12**WATER WELL STANDARDS AND CONTRACTORS' LICENSING**

Section

- 46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.
46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

46-1217 Water Well Standards and Contractors' Licensing Board; created; members; qualifications.

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be

appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environment and Energy or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB296, § 209; Laws 2007, LB463, § 1155; Laws 2019, LB302, § 48.
Operative date July 1, 2019.

Cross References

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-151, 38-155, and 38-158 to 38-174.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the online services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environment and Energy pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2; Laws 2019, LB302, § 49.
Operative date July 1, 2019.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 13

WATER QUALITY MONITORING

Section

46-1301. Legislative findings.

46-1304. Report required; Department of Environment and Energy; duties.

46-1301 Legislative findings.

The Legislature finds that (1) existing monitoring of ground water quality performed by natural resources districts is excellent and deserves recognition, (2) substantial efforts have been undertaken by the Department of Environment and Energy to monitor surface water quality, and (3) it is within the state's capacity to develop a comprehensive, integrated statewide water quality monitoring system.

Source: Laws 2000, LB 1234, § 18; Laws 2019, LB302, § 50.
Operative date July 1, 2019.

46-1304 Report required; Department of Environment and Energy; duties.

The Department of Environment and Energy shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results electronically to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

Source: Laws 2001, LB 329, § 11; Laws 2012, LB782, § 56; Laws 2019, LB302, § 51.
Operative date July 1, 2019.

ARTICLE 15**WELLHEAD PROTECTION AREA ACT**

Section

46-1502. Terms, defined.

46-1502 Terms, defined.

For purposes of the Wellhead Protection Area Act:

(1) Controlling entity means a city, a village, a natural resources district, a rural water district, any other entity, including, but not limited to, a privately owned public water supply system, or any combination thereof operating under an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that operates a public water supply system;

(2) Department means the Department of Environment and Energy;

(3) Director means the Director of Environment and Energy; and

(4) Wellhead protection area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Source: Laws 1998, LB 1161, § 3; Laws 1999, LB 87, § 73; Laws 2019, LB302, § 52.
Operative date July 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section

46-1642. Livestock waste control facility; approvals required.

46-1642 Livestock waste control facility; approvals required.

An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required but for which approval by the Department of Environment and Energy under section 54-2429 is required shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval from the Department of Natural Resources before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon pursuant to this section within sixty days after such application is submitted.

Source: Laws 2005, LB 335, § 42; Laws 2019, LB302, § 53.
Operative date July 1, 2019.

CHAPTER 47

JAILS AND CORRECTIONAL FACILITIES

Article.

10. Healthy Pregnancies for Incarcerated Women Act. 47-1001 to 47-1007.

ARTICLE 10

HEALTHY PREGNANCIES FOR INCARCERATED WOMEN ACT

Section

47-1001. Act, how cited.

47-1002. Legislative findings and declarations.

47-1003. Terms, defined.

47-1004. Detention facility; use of restraints prohibited; exception; detention facility employee; presence in room during labor or childbirth; administrator of detention facility; duties.

47-1005. Civil action authorized.

47-1006. Rules and regulations.

47-1007. Report; contents.

47-1001 Act, how cited.

Sections 47-1001 to 47-1007 shall be known and may be cited as the Healthy Pregnancies for Incarcerated Women Act.

Source: Laws 2019, LB690, § 1.

Effective date September 1, 2019.

47-1002 Legislative findings and declarations.

The Legislature finds and declares:

(1) Restraining a pregnant woman can pose undue health risks to the woman and her pregnancy;

(2) The majority of female prisoners and detainees in Nebraska are nonviolent offenders;

(3) Restraining prisoners and detainees increases their potential for physical harm from an accidental trip or fall. The impact of such harm to a pregnant woman can negatively impact her pregnancy;

(4) Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery. Women often need to move around during labor and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures; and

(5) The Federal Bureau of Prisons, the United States Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Public Health Association all oppose or severely limit the routine shackling of women during labor, delivery, and postpartum recovery because it is unnecessary and

dangerous to a woman's health and well-being and creates an unnecessary risk to the baby during birth.

Source: Laws 2019, LB690, § 2.

Effective date September 1, 2019.

47-1003 Terms, defined.

For the purposes of the Healthy Pregnancies for Incarcerated Women Act:

(1) Administrator means the Director of Correctional Services, the sheriff or other person charged with administration of a jail, or any other official responsible for the administration of a detention facility;

(2) Detainee includes any adult or juvenile female detained under the immigration laws of the United States at any detention facility;

(3) Detention facility means any:

(a) Facility operated by the Department of Correctional Services;

(b) City or county jail;

(c) Juvenile detention facility or staff secure juvenile facility as such terms are defined in section 83-4,125; or

(d) Any other entity or institution operated by the state, a political subdivision, or a combination of political subdivisions for the careful keeping or rehabilitative needs of prisoners or detainees;

(4) Labor means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(5) Postpartum recovery means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth;

(6) Prisoner means any adult or juvenile incarcerated or detained in any detention facility and includes, but is not limited to, any adult or juvenile who is accused of, convicted of, sentenced for, or adjudicated for violations of criminal law or the terms and conditions of parole, probation, pretrial release, post-release supervision, or a diversionary program; and

(7) Restraints means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

Source: Laws 2019, LB690, § 3.

Effective date September 1, 2019.

47-1004 Detention facility; use of restraints prohibited; exception; detention facility employee; presence in room during labor or childbirth; administrator of detention facility; duties.

(1) A detention facility shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, delivery, or postpartum recovery or during transport to a medical facility or birthing center, unless the administrator makes an individualized determination that there are extraordinary circumstances as described in subsection (2) of this section.

(2) Restraints for an extraordinary circumstance are only permitted if the administrator makes an individualized determination that there is a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee known to be pregnant, the staff of the detention facility or medical facility, other prisoners or detainees, or the public, except that:

(a) If the doctor, nurse, or other health professional treating the prisoner or detainee known to be pregnant requests that restraints not be used, any detention facility employee accompanying the prisoner or detainee shall immediately remove all restraints;

(b) Under no circumstances shall leg or waist restraints be used on the prisoner or detainee known to be pregnant unless the prisoner or detainee presents an immediate and serious risk of harm or a substantial and immediate flight risk; and

(c) Under no circumstances shall any restraints be used on any prisoner or detainee in labor or during childbirth unless the prisoner or detainee presents an immediate and serious risk of harm or a substantial and immediate flight risk.

(3) Upon a prisoner's or detainee's admission to a medical facility or birthing center for labor or childbirth, no detention facility employee shall remain present in the room during labor or childbirth unless specifically requested or approved by medical personnel. A detention facility employee may ask medical personnel to allow such employee to remain present. If a detention facility employee's presence is requested or approved by medical personnel, the employee shall, if practicable, be female.

(4) If a prisoner or detainee known to be pregnant is transported to a medical facility or birthing center and restraints are used, the administrator of the detention facility shall inform the relevant staff at the medical facility or birthing center of the risks and dangers of removing the restraints from the specific prisoner or detainee.

(5) If restraints are used on a prisoner or detainee known to be pregnant pursuant to subsection (2) of this section:

(a) The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and

(b) The administrator shall make written findings within ten days as to the extraordinary circumstances that dictated the use of the restraints. These findings shall be kept on file by the detention facility for at least five years and be made available for public inspection, except that no individually identifying information of the prisoner or detainee shall be made public under this section without the prisoner's or detainee's prior written consent.

Source: Laws 2019, LB690, § 4.

Effective date September 1, 2019.

47-1005 Civil action authorized.

Any prisoner or detainee restrained in violation of the Healthy Pregnancies for Incarcerated Women Act may file a civil action which shall be pursued as a

tort claim under the Political Subdivisions Tort Claims Act or the State Tort Claims Act.

Source: Laws 2019, LB690, § 5.
Effective date September 1, 2019.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.
State Tort Claims Act, see section 81-8,235.

47-1006 Rules and regulations.

(1) On or before October 1, 2019, each detention facility in this state shall adopt and promulgate rules and regulations to carry out the Healthy Pregnancies for Incarcerated Women Act. A detention facility may also adopt and promulgate such rules and regulations developed by the Jail Standards Board or the Nebraska Commission on Law Enforcement and Criminal Justice. Such rules and regulations shall be included in any handbook for prisoners or detainees.

(2) On and after October 1, 2019, a detention facility shall inform each prisoner or detainee of the rules and regulations adopted and promulgated under this section upon admission to the detention facility.

(3) On or before November 1, 2019, a detention facility shall inform any prisoner or detainee in custody of the detention facility, who has not previously been informed, of the rules and regulations adopted and promulgated under this section.

Source: Laws 2019, LB690, § 6.
Effective date September 1, 2019.

47-1007 Report; contents.

On or before June 1, 2020, and each June 1 thereafter, each administrator of a detention facility shall submit a report describing any use of restraints on a pregnant prisoner or detainee in the preceding calendar year. The Director of Correctional Services shall submit such report to the Inspector General of the Nebraska Correctional System. An administrator of a detention facility operated by a political subdivision shall submit such report to the Jail Standards Board. The report shall not contain individually identifying information of any prisoner or detainee. Such reports shall be made available for public inspection.

Source: Laws 2019, LB690, § 7.
Effective date September 1, 2019.

LABOR

CHAPTER 48
LABOR

Article.

1. Workers' Compensation.
Part II—Elective Compensation.
 (c) Schedule of Compensation. 48-122.
Part III—Miscellaneous Provisions. 48-148.02.
Part V—Claims against the State. 48-193 to 48-1,108.
Part VI—Name of Act and Applicability of Changes. 48-1,110.
Part VII—Compensation Court Cash Fund. 48-1,116.
2. General Provisions. 48-203.
6. Employment Security. 48-618 to 48-652.
7. Boiler Inspection. Transferred or Repealed.
11. Nebraska Fair Employment Practice Act. 48-1114.
12. Wages.
 (c) Wage Payment and Collection. 48-1234.
18. Nebraska Amusement Ride Act. Transferred or Repealed.
21. Contractor Registration. 48-2117.
22. Non-English-Speaking Employees. 48-2213.
25. Conveyance Safety Act. Transferred or Repealed.

ARTICLE 1

WORKERS' COMPENSATION

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

Section

- 48-122. Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents; appointment of attorney in fact; bond; filing required.

PART III—MISCELLANEOUS PROVISIONS

- 48-148.02. Debt collection; limitations; notice; contents; delivery; Attorney General; ensure compliance; stay of lawsuits; effect on statute of limitations.

PART V—CLAIMS AGAINST THE STATE

- 48-193. Terms, defined.
48-194. Risk Manager; authority; Attorney General; duties.
48-195. Rules and regulations.
48-196. State agency; handle claims; Attorney General; supervision.
48-197. Claims; filing; investigation; report.
48-1,108. Insurance policy; applicability; company; Attorney General; Risk Manager; cooperate.

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

- 48-1,110. Act, how cited.

PART VII—COMPENSATION COURT CASH FUND

- 48-1,116. Compensation Court Cash Fund; created; use; investment.

PART II—ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

48-122 Compensation; injuries causing death; amount and duration of payments; computation of wages; expenses of burial; alien dependents; appointment of attorney in fact; bond; filing required.

(1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding ten thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this section, the consular officer of the nation of which the employee, whose injury results in death, is a citizen shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee.

(ii) At any time prior to the final settlement, a nonresident alien dependent may file with the Nebraska Workers' Compensation Court a power of attorney designating any suitable person residing in this state to act as attorney in fact in proceedings under the Nebraska Workers' Compensation Act. If the compensation court determines that the interests of the nonresident alien dependent will be better served by such person than by the consular officer, the compensation court shall appoint such person to act as attorney in fact in such proceedings.

In making such determination the court shall consider, among other things, whether a consular officer's jurisdiction includes Nebraska and the responsiveness of the consular officer to attempts made by an attorney representing the employee to engage such consular officer in the proceedings.

(b) Such consular officer or appointed person shall have in behalf of such nonresident alien dependents the exclusive right to institute proceedings for, adjust, and settle all claims for compensation provided by the Nebraska Workers' Compensation Act and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

(c) A person appointed under subdivision (5)(a)(ii) of this section shall furnish a bond satisfactory to the compensation court conditioned upon the proper application of any money received as compensation under the Nebraska Workers' Compensation Act. Before the bond is discharged, such appointed person shall file with the compensation court a verified account of receipts and disbursements of such money.

(d) For purposes of this section, consular officer means a consul general, vice consul general, or vice consul or the representative of any such official residing within the State of Nebraska.

(6) The changes made to this section by Laws 2019, LB418, apply to cases under the Nebraska Workers' Compensation Act that are pending on September 1, 2019, and to cases filed on or after such date.

Source: Laws 1913, c. 198, § 22, p. 588; R.S.1913, § 3663; Laws 1917, c. 85, § 8, p. 205; Laws 1919, c. 91, § 3, p. 232; C.S.1922, § 3045; C.S.1929, § 48-122; Laws 1935, c. 57, § 40, p. 209; C.S.Supp.,1941, § 48-122; R.S.1943, § 48-122; Laws 1945, c. 112, § 2, p. 361; Laws 1949, c. 160, § 2, p. 406; Laws 1951, c. 152, § 2, p. 620; Laws 1953, c. 162, § 2, p. 509; Laws 1955, c. 186, § 2, p. 530; Laws 1957, c. 203, § 2, p. 713; Laws 1957, c. 204, § 2, p. 719; Laws 1959, c. 223, § 2, p. 787; Laws 1963, c. 284, § 2, p. 850; Laws 1963, c. 285, § 2, p. 858; Laws 1965, c. 279, § 2, p. 803; Laws 1967, c. 288, § 2, p. 786; Laws 1969, c. 393, § 2, p. 1381; Laws 1971, LB 320, § 2; Laws 1973, LB 193, § 2; Laws 1974, LB 710, § 2; Laws 1975, LB 198, § 2; Laws 1977, LB 275, § 2; Laws 1978, LB 446, § 2; Laws 1979, LB 114, § 2; Laws 1981, LB 234, § 1; Laws 1983, LB 158, § 2; Laws 1985, LB 608, § 2; Laws 1986, LB 811, § 39; Laws 1997, LB 853, § 1; Laws 2012, LB738, § 1; Laws 2019, LB418, § 1.
Effective date September 1, 2019.

PART III—MISCELLANEOUS PROVISIONS

48-148.02 Debt collection; limitations; notice; contents; delivery; Attorney General; ensure compliance; stay of lawsuits; effect on statute of limitations.

(1) After receipt of the notices provided for in this section, no debt collection shall be undertaken by a provider of services, supplier of services, collection agency, collector, or creditor attempting to collect a debt incurred against an employee or his or her spouse for treatment of a work-related injury while the matter is pending in the compensation court until final adjudication of the case regarding such debt.

(2) Notice under this section shall be made in writing and provided to each provider of services, supplier of services, collection agency, collector, or creditor as described in subsection (1) of this section. Notice shall not be imputed to any party from the service of notice upon another party.

(3) The initial notice shall contain the provider's name, employee's name, date of the injury, and a description of the injury, together with the filing date and case number pending in the compensation court. Within thirty days after the initial notice, an additional notice shall be provided specifically identifying the debt upon which collection should be stayed, unless identification was made in the initial notice. Notice shall be void if it fails to provide the proper information or is not provided within the required timeframes, or until proper notice is provided.

(4) Notice shall be made by personally delivering the notice to the person on whom it is to be served or by sending it by first-class mail addressed to the person or business entity on whom it is to be served at his or her residence or the principal office address of a business entity, or by a method otherwise agreed to between the parties. Each provider, supplier, collection agency, collector, or creditor shall not be deemed to be notified under this section unless receipt of the notice can be demonstrated.

(5) If collection efforts continue after both notices are received by the entity seeking to collect, the notices may be forwarded to the Attorney General requesting his or her assistance in gaining compliance with this act. The entity seeking to collect shall be copied on such notification to the Attorney General, and shall be given a reasonable period of time to respond to the notice and to cure any noncompliance. If noncompliance continues, the Attorney General may take such reasonable steps as is necessary to ensure compliance with this section. No private cause of action shall exist under this section. A violation of this section shall not be considered a violation of any other state or federal law.

(6) After notice is provided, collection lawsuits may be stayed, where applicable, by the plaintiff in a pending collection case, until final adjudication by the compensation court of the matter of the debt alleged to be subject to this section.

(7) The statute of limitations on the collection of such debt shall be tolled during the pendency of the compensation case from the date the case was filed with the compensation court.

(8) This section shall have no applicability outside of the Nebraska Workers' Compensation Act and shall not apply to any other cause of action under state or federal law.

Source: Laws 2019, LB418, § 8.

Effective date September 1, 2019.

PART V—CLAIMS AGAINST THE STATE

48-193 Terms, defined.

For purposes of sections 48-192 to 48-1,109, unless the context otherwise requires:

(1) State agency shall include all departments, agencies, boards, courts, bureaus, and commissions of the State of Nebraska and corporations the primary function of which is to act as, and while acting as, instrumentalities or agencies of the State of Nebraska, including the University of Nebraska and the

state colleges, but shall not include corporations that are essentially private corporations or entities created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. State agency shall not be construed to include any contractor with the State of Nebraska except and unless such contractor comes within the provisions of section 48-116;

(2) Employee of the state shall mean any one or more officers or employees of the state or any state agency and shall include duly appointed members of boards or commissions when they are acting in their official capacity. State employee shall not be construed to include any employee of an entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act or any contractor with the State of Nebraska unless such contractor comes within the provisions of section 48-116;

(3) Workers' compensation claim shall mean any claim against the State of Nebraska arising under the Nebraska Workers' Compensation Act; and

(4) Award shall mean any amount determined by the Risk Manager and the Attorney General to be payable to a claimant under sections 48-192 to 48-1,109 or the amount of any compromise or settlement under such sections.

Source: Laws 1971, LB 390, § 2; Laws 1986, LB 811, § 122; Laws 1991, LB 6, § 1; Laws 1991, LB 81, § 3; Laws 1999, LB 87, § 75; Laws 2019, LB418, § 2.

Effective date September 1, 2019.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

48-194 Risk Manager; authority; Attorney General; duties.

The Risk Manager with the advice of the Attorney General shall have the authority to pay claims of all workers' compensation benefits when liability is undisputed. In any claims when liability or the amount of liability is disputed by the Attorney General, authority is hereby conferred upon the Attorney General to consider, ascertain, adjust, determine, and allow any workers' compensation claim. If any such claim is compromised or settled, the approval of the claimant, the Risk Manager, and the Attorney General shall be required and such settlements also shall be approved by the Nebraska Workers' Compensation Court following the procedure in the Nebraska Workers' Compensation Act.

Source: Laws 1971, LB 390, § 3; Laws 1972, LB 1334, § 1; Laws 1981, LB 273, § 10; Laws 1986, LB 811, § 123; Laws 1993, LB 757, § 29; Laws 2019, LB418, § 3.

Effective date September 1, 2019.

48-195 Rules and regulations.

The risk management and state claims division of the Department of Administrative Services may, pursuant to the Administrative Procedure Act, adopt and promulgate such rules and regulations as are necessary to carry out sections 48-192 to 48-1,109.

Source: Laws 1971, LB 390, § 4; Laws 1986, LB 811, § 124; Laws 2000, LB 1221, § 15; Laws 2019, LB418, § 4.

Effective date September 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

48-196 State agency; handle claims; Attorney General; supervision.

The Risk Manager may delegate to a state agency the handling of workers' compensation claims of employees of that agency, under the supervision and direction of the Attorney General.

Source: Laws 1971, LB 390, § 5; Laws 1986, LB 811, § 125; Laws 2000, LB 1221, § 16; Laws 2019, LB418, § 5.
Effective date September 1, 2019.

48-197 Claims; filing; investigation; report.

All claims under sections 48-192 to 48-1,109 shall be filed with the Risk Manager. The Risk Manager shall immediately advise the Attorney General of the filing of any claim. It shall be the duty of the Attorney General to cause a complete investigation to be made of all such claims. Whenever any state agency receives notice or has knowledge of any alleged injury under the Nebraska Workers' Compensation Act, such state agency shall immediately file a first report of such alleged injury with the Nebraska Workers' Compensation Court and the Risk Manager and shall file such other forms as may be required by such court or the Risk Manager.

Source: Laws 1971, LB 390, § 6; Laws 1972, LB 1334, § 2; Laws 1981, LB 273, § 11; Laws 1986, LB 811, § 126; Laws 1992, Third Spec. Sess., LB 14, § 2; Laws 2019, LB418, § 6.
Effective date September 1, 2019.

48-1,108 Insurance policy; applicability; company; Attorney General; Risk Manager; cooperate.

Whenever a claim or suit against the state is covered by workers' compensation insurance, the provisions of the insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of sections 48-192 to 48-1,109. The Attorney General and the Risk Manager shall cooperate with the insurance company.

Source: Laws 1971, LB 390, § 17; Laws 1986, LB 811, § 134; Laws 2019, LB418, § 7.
Effective date September 1, 2019.

PART VI—NAME OF ACT AND APPLICABILITY OF CHANGES

48-1,110 Act, how cited.

Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5; Laws 2010, LB780, § 3; Laws 2011, LB151, § 16; Laws 2015, LB480, § 5; Laws 2019, LB418, § 9.
Effective date September 1, 2019.

PART VII—COMPENSATION COURT CASH FUND

48-1,116 Compensation Court Cash Fund; created; use; investment.

The Compensation Court Cash Fund is hereby created. The fund shall be used to aid in providing for the expense of administering the Nebraska Workers' Compensation Act and the payment of the salaries and expenses of the personnel of the Nebraska Workers' Compensation Court.

All fees received pursuant to sections 48-120, 48-120.02, 48-138, 48-139, 48-145.04, and 48-165 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. The fund shall also consist of amounts credited to the fund pursuant to sections 48-1,113, 48-1,114, and 77-912. The State Treasurer may receive and credit to the fund any money which may at any time be contributed to the state or the fund by the federal government or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 757, § 22; Laws 1994, LB 1066, § 35; Laws 2002, LB 1310, § 5; Laws 2005, LB 13, § 33; Laws 2009, First Spec. Sess., LB3, § 24; Laws 2017, LB331, § 24; Laws 2018, LB945, § 11; Laws 2019, LB293, § 30.
Effective date May 28, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 2

GENERAL PROVISIONS

Section

48-203. Legislative findings, declarations, and intent; veterans' program coordinator; qualifications; duties; Department of Veterans' Affairs; duties.

48-203 Legislative findings, declarations, and intent; veterans' program coordinator; qualifications; duties; Department of Veterans' Affairs; duties.

(1) The Legislature finds and declares that:

(a) Nebraska is a welcoming state for veterans and their families; and

(b) Nebraska is committed to workforce development initiatives that help attract and retain veterans and their families.

(2) It is the intent of the Legislature to:

(a) Increase efforts to create public awareness among veterans and their families about the benefits of living and working in Nebraska, including special initiatives enacted to make Nebraska a veteran-friendly state; and

(b) Develop new initiatives to better connect veterans to Nebraska's job market and the workforce development needs of employers.

(3) The position of veterans' program coordinator shall be maintained by the Department of Labor. The coordinator shall be a veteran and a full-time employee of the Department of Labor and shall:

(a) Seek advice and input from the Commission on Military and Veteran Affairs related to veterans' workforce development issues;

(b) Be a nonvoting, ex officio member of the Commission on Military and Veteran Affairs; and

(c) Submit an annual progress report to the Commission on Military and Veteran Affairs.

(4) The Department of Labor shall provide the necessary staff to assist the veterans' program coordinator in carrying out the purposes of this section.

(5) The Department of Veterans' Affairs shall:

(a) Develop a web site, in collaboration with the Department of Labor, with a job-search tool specific to veterans. Such web site shall be implemented on a date designated by the Director of Veterans' Affairs when sufficient cash funds have accumulated in the Veterans Employment Program Fund to develop such web site, but no later than June 30, 2024; and

(b) Research best practices and web sites specific to veterans from other states.

Source: Laws 2019, LB138, § 1.

Effective date September 1, 2019.

ARTICLE 6

EMPLOYMENT SECURITY

Section

- 48-618. Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; Unemployment Trust Fund; investment; bond or insurance.
- 48-619. Unemployment Trust Fund; withdrawals.
- 48-621. Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.
- 48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.
- 48-648.02. Wages, defined.
- 48-649.03. Employer's combined tax rate once benefits payable from experience account; experience factor.
- 48-652. Employer's experience account; reimbursement account; combined tax; liability; termination; reinstatement.

48-618 Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; Unemployment Trust Fund; investment; bond or insurance.

(1) The Commissioner of Labor shall designate a treasurer and custodian of the Unemployment Compensation Fund, who shall be selected in accordance with section 48-609. The treasurer shall administer the Unemployment Compensation Fund in accordance with the directions of the commissioner and shall issue his or her warrants upon it in accordance with such rules and regulations as adopted and promulgated by the commissioner. The treasurer shall maintain within the Unemployment Compensation Fund three separate accounts:

- (a) A clearing account;
- (b) An Unemployment Trust Fund account; and
- (c) A benefit account.

(2) All money payable to the Unemployment Compensation Fund, upon receipt by the commissioner, shall be forwarded to the treasurer. The treasurer shall immediately deposit the same in the clearing account or the benefit account to be used to offset future benefit draws from the Unemployment Trust Fund. Transfers of interest on delinquent contributions pursuant to subdivision (1)(b) of section 48-621 and refunds payable pursuant to section 48-660 may be paid from the clearing account upon warrants issued by the treasurer of the Unemployment Compensation Fund under the direction of the commissioner. After clearance, all other money in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund. The benefit account shall consist of all money requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer under the direction of the commissioner in any bank or public depository in which general funds of the state may be deposited. No public deposit insurance charge or premium shall be paid out of the Unemployment Compensation Fund.

(3) The Unemployment Trust Fund is to be maintained pursuant to section 904 of the Social Security Act, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(4) Any money in the Unemployment Trust Fund available for investment by the State of Nebraska shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The treasurer shall be bonded or insured as required by section 11-201.

Source: Laws 1937, c. 108, § 9, p. 387; Laws 1939, c. 56, § 7, p. 243; Laws 1941, c. 94, § 7, p. 395; C.S.Supp., 1941, § 48-709; R.S. 1943, § 48-618; Laws 1947, c. 175, § 5, p. 573; Laws 1955, c. 190, § 4, p. 541; Laws 1978, LB 653, § 11; Laws 1985, LB 339, § 15; Laws 1995, LB 1, § 3; Laws 2000, LB 953, § 4; Laws 2004, LB 884, § 22; Laws 2017, LB172, § 17; Laws 2019, LB359, § 1. Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

48-619 Unemployment Trust Fund; withdrawals.

(1) Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations adopted and promulgated by the Commissioner of Labor, except that money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may be appropriated by the Legislature in accordance with section 903 of the federal Social Security Act for the administration of the Employment Security Law. For such purposes and to the extent required, credits to the account pursuant to section 903 of the federal Social Security Act may be transferred to the Employment Security Administration Fund established in subdivision (1)(a) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts as he or she deems necessary for the payment of benefits for a

reasonable future period, not to exceed the amounts standing to this state's account therein. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations.

(2) Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall, at the discretion of the commissioner, either be:

(a) Deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods; or

(b) Redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618.

(3) Any warrant issued for the payment of benefits that is duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the benefit account, except that a substitute warrant may be issued and charged to the benefit account on proper showing at any time within the year next following. A claim for payment of an invalidated warrant not made within one year of original issuance may be presented for payment as a miscellaneous claim under the State Miscellaneous Claims Act. Any charge made to an employer's account pursuant to section 48-652 for any such invalidated benefit warrant shall stand as originally made.

(4) As used in this section, the term warrant shall include a signature negotiable instrument, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the treasurer. The warrant, when it is a dual signature negotiable instrument, shall affect the state's cash balance in the bank when redeemed by the treasurer, not when cashed by a financial institution.

Source: Laws 1937, c. 108, § 9, p. 388; Laws 1939, c. 56, § 7, p. 244; C.S.Supp.,1941, § 48-709; R.S.1943, § 48-619; Laws 1957, c. 208, § 2, p. 728; Laws 1985, LB 339, § 16; Laws 1995, LB 1, § 4; Laws 2000, LB 953, § 5; Laws 2005, LB 484, § 4; Laws 2017, LB172, § 18; Laws 2019, LB359, § 2.
Effective date September 1, 2019.

Cross References

State Miscellaneous Claims Act, see section 81-8,294.

48-621 Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.

(1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(a) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money credited to this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary as defined by the specific federal programs, state statutes, and contract obligations for the proper and efficient administration of all programs of the Department of Labor. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such programs shall also be credited to this fund. All money in the Employment Security Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time. Fund balances shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Any money in the Employment Security Administration 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; and

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner to permit substitution for, or a corresponding reduction in, federal funds which, in the absence of such money, would be available to finance expenditures for the administration of the unemployment insurance law. However, nothing in this section shall prevent the money in the Employment Security Special Contingent Fund from being used as a revolving fund to cover necessary and proper expenditures under the law for which federal, state, or contractual funds are owed but have not yet been received. Upon receipt of such funds, covered expenditures shall be charged against such funds. Money in the Employment Security Special Contingent Fund may only be used by the Commissioner of Labor as follows:

(i) To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;

(ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States. No expenditures shall be made from this fund for this purpose except on written authorization by the Governor at the request of the Commissioner of Labor; and

(iii) To be transferred to the Job Training Cash Fund.

(2)(a) Money credited to the account of this state in the Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except:

(i) For the payment of benefits pursuant to section 48-619; and

(ii) For the payment of expenses incurred for the administration of the Employment Security Law and public employment offices. Money requisitioned or used for this purpose must be pursuant to a specific appropriation by the Legislature. Any such appropriation law shall specify the amount and purposes for which the money is appropriated and must be enacted before expenses may be incurred and money may be requisitioned. Such appropriation is subject to the following conditions:

(A) Money may be obligated for a limited period ending not more than two years after the effective date of the appropriation law; and

(B) An obligated amount shall not exceed the aggregate amounts transferred to the account of this state pursuant to section 903 of the Social Security Act less the aggregate of amounts used by this state pursuant to the Employment Security Law and amounts charged against the amounts transferred to the account of this state.

(b) For purposes of subdivision (2)(a)(ii)(B) of this section, amounts appropriated for administrative purposes shall be charged against transferred amounts when the obligation is entered into.

(c) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(d) Money appropriated as provided in this subsection for the payment of administration expenses shall be requisitioned as needed for the payment of obligations incurred under such appropriation. Upon requisition, administration expenses shall be credited to the Employment Security Administration Fund from which such payments shall be made. Money so credited shall, until expended, remain a part of the Employment Security Administration Fund. If not immediately expended, credited money shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(e) Notwithstanding subdivision (2)(a) of this section, money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the Legislature.

Source: Laws 1937, c. 108, § 13, p. 397; Laws 1939, c. 56, § 10, p. 248; Laws 1941, c. 94, § 10, p. 398; C.S.Supp., 1941, § 48-712; R.S. 1943, § 48-621; Laws 1947, c. 175, § 6, p. 574; Laws 1949, c. 163, § 5, p. 421; Laws 1957, c. 208, § 3, p. 729; Laws 1969, c. 584, § 50, p. 2375; Laws 1985, LB 339, § 17; Laws 1989, LB 305, § 4; Laws 1994, LB 1066, § 38; Laws 1995, LB 1, § 5; Laws

1996, LB 1072, § 3; Laws 1999, LB 608, § 2; Laws 2000, LB 953, § 6; Laws 2003, LB 197, § 1; Laws 2012, LB782, § 62; Laws 2012, LB946, § 9; Laws 2017, LB172, § 20; Laws 2019, LB359, § 3.

Effective date September 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.

(1) There is hereby created the Nebraska Worker Training Board. The board shall consist of seven members appointed and serving for terms determined by the Governor as follows:

- (a) A representative of employers in Nebraska;
- (b) A representative of employees in Nebraska;
- (c) A representative of the public;
- (d) The Commissioner of Labor or a designee;
- (e) The Director of Economic Development or a designee;
- (f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) The chairperson of the Nebraska Worker Training Board shall be the representative of the employers in Nebraska.

(3) By July 1 of each year, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Cash Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) By July 1 of each year, the Department of Labor shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Source: Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4; Laws 2014, LB997, § 3; Laws 2017, LB172, § 23; Laws 2019, LB359, § 4.
Effective date September 1, 2019.

48-648.02 Wages, defined.

(1) For tax years beginning before January 1, 2020, as used in sections 48-648 and 48-649 to 48-649.04 only, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds nine thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit

may be taken for contributions required to be paid into a state unemployment fund.

(2) For tax years beginning on or after January 1, 2020, as used in sections 48-648 and 48-649 to 48-649.04 only:

(a) Except as to employers assigned to category twenty under section 48-649.03, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds nine thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; and

(b) For employers assigned to category twenty under section 48-649.03, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds twenty-four thousand dollars unless that part of the remuneration is subject to a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

Source: Laws 2005, LB 739, § 6; Laws 2017, LB172, § 62; Laws 2019, LB428, § 1.
Effective date September 1, 2019.

48-649.03 Employer’s combined tax rate once benefits payable from experience account; experience factor.

(1) Once benefits have been payable from and chargeable to an employer’s experience account throughout the preceding four calendar quarters and wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods, the employer’s combined tax rate shall be calculated according to this section. The combined tax rate shall be based upon the employer’s experience rating record and determined from the employer’s reserve ratio.

(2) The employer’s reserve ratio is the percent obtained by dividing (a) the amount by which the employer’s contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer’s contributions due for that year paid on or before October 31 of such year, exceed the employer’s benefits charged during the same period, by (b) the employer’s average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer’s average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions were payable.

(3) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40

EMPLOYMENT SECURITY

§ 48-649.03

4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio, with category one assigned to accounts with the highest reserve ratios and category twenty assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(a) Any employer with a portion of its taxable wages falling into two consecutive categories shall be assigned to the lower category;

(b) No employer with a reserve ratio calculated to five decimal places equal to the similarly calculated reserve ratio of another employer shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and

(c) No employer with a positive experience account balance shall be assigned to category twenty.

(4) The state's reserve ratio shall be calculated annually by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, plus any amount of combined tax owed by employers eligible for and electing annual payment status for the four most recent quarters ending on September 30 in accordance with rules and regulations adopted by the commissioner, by the state's total wages from the four calendar quarters ending on September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subsection to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	Yield Factor
1.45 percent and above	= 0.70
1.30 percent up to but not including 1.45	= 0.75
1.15 percent up to but not including 1.30	= 0.80
1.00 percent up to but not including 1.15	= 0.90
0.85 percent up to but not including 1.00	= 1.00
0.70 percent up to but not including 0.85	= 1.10
0.60 percent up to but not including 0.70	= 1.20
0.50 percent up to but not including 0.60	= 1.25
0.45 percent up to but not including 0.50	= 1.30
0.40 percent up to but not including 0.45	= 1.35

0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

The commissioner may adjust the yield factor determined pursuant to the preceding table to a lower scheduled yield factor if the state's reserve ratio is 1.00 percent or greater. Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(5) The average combined tax rate is assigned to rate category twelve as established in subsection (3) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(6) In addition to required contributions, an employer may make voluntary contributions to the fund to be credited to his or her account. Voluntary contributions by employers may be made up to the amount necessary to qualify for one rate category reduction. Voluntary contributions received after January 10 shall not be used in rate calculations for the same calendar year.

(7) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured.

Source: Laws 2017, LB172, § 66; Laws 2019, LB359, § 5.
Effective date September 1, 2019.

48-652 Employer's experience account; reimbursement account; combined tax; liability; termination; reinstatement.

(1)(a) A separate experience account shall be established for each employer who is liable for payment of combined tax. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account, and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are

attributable to service in the employ of such employers. The commissioner shall adopt and promulgate such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if:

(i) Such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.13, (D) left work from which he or she was discharged for misconduct connected with his or her work, (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.13, or (F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.17; and

(ii) The employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations adopted and promulgated by the commissioner.

(b) No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(c) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of section 48-627.01.

(d) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall adopt and promulgate rules and regulations determining the manner in which benefits shall be charged against the account

of several employers for whom an individual performed employment during the same quarter or during the same base period.

(4)(a) An employer's experience account shall be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because one or more of the owners, officers, partners, or limited liability company members or the majority stockholder entered the armed forces of the United States, or of any of its allies, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if:

(i) The employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account;

(ii) The employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account; and

(iii) The commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. In no case shall the payment of benefits to an individual be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6)(a) For benefit years beginning before September 3, 2017, if an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations adopted and promulgated by the commissioner.

(b) For benefit years beginning on or after September 3, 2017, if an individual's base period wage credits represent part-time employment for an employer and the employer continues to employ the individual to the same extent as during the base period, then the employer's experience account, in the case of a contributory employer, or the employer's reimbursement account, in the case of a reimbursable employer, shall not be charged if the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

(7) If a contributory employer responds to the department's request for information within the time period set forth in subsection (1) of section 48-632 and provides accurate information as known to the employer at the time of the response, the employer's experience account shall not be charged if the individual's separation from employment is voluntary and without good cause as determined under section 48-628.12.

Source: Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp., 1941, § 48-707; R.S.

1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6; Laws 2012, LB1058, § 7; Laws 2017, LB172, § 70; Laws 2017, LB519, § 1; Laws 2019, LB359, § 6.

Effective date September 1, 2019.

ARTICLE 7

BOILER INSPECTION

Section

- 48-719. Transferred to section 81-5,165.
- 48-720. Transferred to section 81-5,166.
- 48-721. Transferred to section 81-5,167.
- 48-722. Transferred to section 81-5,168.
- 48-723. Transferred to section 81-5,169.
- 48-724. Transferred to section 81-5,170.
- 48-725. Transferred to section 81-5,171.
- 48-726. Transferred to section 81-5,172.
- 48-727. Transferred to section 81-5,173.
- 48-728. Transferred to section 81-5,174.
- 48-729. Transferred to section 81-5,175.
- 48-730. Transferred to section 81-5,176.
- 48-731. Transferred to section 81-5,177.
- 48-732. Transferred to section 81-5,178.
- 48-733. Transferred to section 81-5,179.
- 48-735.01. Transferred to section 81-5,180.
- 48-736. Transferred to section 81-5,181.
- 48-737. Transferred to section 81-5,182.
- 48-738. Transferred to section 81-5,183.
- 48-739. Transferred to section 81-5,184.
- 48-740. Transferred to section 81-5,185.
- 48-741. Transferred to section 81-5,186.
- 48-742. Transferred to section 81-5,187.
- 48-743. Transferred to section 81-5,188.

48-719 Transferred to section 81-5,165.

48-720 Transferred to section 81-5,166.

48-721 Transferred to section 81-5,167.

48-722 Transferred to section 81-5,168.

48-723 Transferred to section 81-5,169.

48-724 Transferred to section 81-5,170.

48-725 Transferred to section 81-5,171.

48-726 Transferred to section 81-5,172.

- 48-727 Transferred to section 81-5,173.
- 48-728 Transferred to section 81-5,174.
- 48-729 Transferred to section 81-5,175.
- 48-730 Transferred to section 81-5,176.
- 48-731 Transferred to section 81-5,177.
- 48-732 Transferred to section 81-5,178.
- 48-733 Transferred to section 81-5,179.
- 48-735.01 Transferred to section 81-5,180.
- 48-736 Transferred to section 81-5,181.
- 48-737 Transferred to section 81-5,182.
- 48-738 Transferred to section 81-5,183.
- 48-739 Transferred to section 81-5,184.
- 48-740 Transferred to section 81-5,185.
- 48-741 Transferred to section 81-5,186.
- 48-742 Transferred to section 81-5,187.
- 48-743 Transferred to section 81-5,188.

ARTICLE 11

NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

Section

48-1114. Opposition to unlawful practice; participation in investigation; communication regarding employee wages, benefits, or other compensation; discrimination prohibited.

48-1114 Opposition to unlawful practice; participation in investigation; communication regarding employee wages, benefits, or other compensation; discrimination prohibited.

(1) It shall be an unlawful employment practice for an employer to discriminate against any of his or her employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he or she (a) has opposed any practice made an unlawful employment practice by the Nebraska Fair Employment Practice Act, (b) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act, (c) has opposed any practice or refused to carry out any action unlawful under federal law or the laws of this state, or (d) has inquired about, discussed, or disclosed information regarding employee wages, benefits, or other compensation. This subdivision (d) shall not apply to instances in which an employee who has authorized access to the information regarding wages, benefits, or other compensation of other employees as a part of such employee's job functions discloses such information to a

person who does not otherwise have authorized access to such information, unless such disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer.

(2) Nothing in this subsection or subdivision (1)(d) of this section shall be contrary to applicable state or federal law or:

(a) Create an obligation for any employer or employee to disclose information regarding employee wages, benefits, or other compensation;

(b) Permit an employee, without the written consent of the employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law. For purposes of this subdivision, proprietary information does not include information regarding employee wages, benefits, or other compensation;

(c) Permit an employee to disclose information regarding wages, benefits, or other compensation of other employees to a competitor of the employer;

(d) Apply to employers which are exempt from the Nebraska Fair Employment Practice Act under section 48-1102;

(e) Permit an employee to discuss information regarding employee wages, benefits, or other compensation during working hours, as defined in existing workplace policies, or in violation of specific contractual obligations; or

(f) Permit an employee to disseminate information regarding employee wages, benefits, or other compensation to the general public. For purposes of this subdivision, general public does not include public officials, judicial officers, legislators, trade associations, or other reasonable third parties for the employee's mutual aid or protection.

(3) The changes made to this section by Laws 2019, LB217, shall not be construed so as to impair or affect the obligation of any lawful contract in existence prior to September 1, 2019.

Source: Laws 1965, c. 276, § 14, p. 788; Laws 1985, LB 324, § 2; Laws 1986, LB 1108, § 2; Laws 1993, LB 360, § 14; Laws 2019, LB217, § 1.

Effective date September 1, 2019.

ARTICLE 12

WAGES

(c) WAGE PAYMENT AND COLLECTION

Section

48-1234. Commissioner of Labor; citation; notice of penalty; employer contest; hearing.

(c) WAGE PAYMENT AND COLLECTION

48-1234 Commissioner of Labor; citation; notice of penalty; employer contest; hearing.

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other

manner of delivery by which the United States Postal Service can verify delivery or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

Source: Laws 2014, LB560, § 3; Laws 2019, LB359, § 7.
Effective date September 1, 2019.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 18

NEBRASKA AMUSEMENT RIDE ACT

Section

48-1801.	Transferred to section 81-5,190.
48-1802.	Transferred to section 81-5,191.
48-1803.	Transferred to section 81-5,192.
48-1804.	Transferred to section 81-5,193.
48-1804.01.	Transferred to section 81-5,194.
48-1805.	Transferred to section 81-5,195.
48-1806.	Transferred to section 81-5,196.
48-1807.	Transferred to section 81-5,197.
48-1808.	Transferred to section 81-5,198.
48-1809.	Transferred to section 81-5,199.
48-1811.	Transferred to section 81-5,200.
48-1812.	Transferred to section 81-5,201.
48-1813.	Transferred to section 81-5,202.
48-1814.	Transferred to section 81-5,203.
48-1815.	Transferred to section 81-5,204.
48-1816.	Transferred to section 81-5,205.
48-1817.	Transferred to section 81-5,206.
48-1818.	Transferred to section 81-5,207.
48-1819.	Transferred to section 81-5,208.
48-1820.	Repealed. Laws 2019, LB301, § 87.

48-1801 Transferred to section 81-5,190.

48-1802 Transferred to section 81-5,191.

48-1803 Transferred to section 81-5,192.

48-1804 Transferred to section 81-5,193.

48-1804.01 Transferred to section 81-5,194.

48-1805 Transferred to section 81-5,195.

48-1806 Transferred to section 81-5,196.

48-1807 Transferred to section 81-5,197.

48-1808 Transferred to section 81-5,198.

- 48-1809** Transferred to section 81-5,199.
- 48-1811** Transferred to section 81-5,200.
- 48-1812** Transferred to section 81-5,201.
- 48-1813** Transferred to section 81-5,202.
- 48-1814** Transferred to section 81-5,203.
- 48-1815** Transferred to section 81-5,204.
- 48-1816** Transferred to section 81-5,205.
- 48-1817** Transferred to section 81-5,206.
- 48-1818** Transferred to section 81-5,207.
- 48-1819** Transferred to section 81-5,208.
- 48-1820** Repealed. Laws 2019, LB301, § 87.
Operative date July 1, 2019.

ARTICLE 21
CONTRACTOR REGISTRATION

Section

48-2117. Data base of contractors; contents; removal.

48-2117 Data base of contractors; contents; removal.

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967.

(2) The data base shall be accessible on the web site of the Department of Labor.

(3) The data base shall include, but not be limited to, the following information with respect to each registered contractor:

(a) Whether the contractor carries workers' compensation insurance in accordance with the Nebraska Workers' Compensation Act;

(b) Whether the contractor is self-insured in accordance with the Nebraska Workers' Compensation Act; or

(c) Whether the contractor is a sole proprietor with no employees and does not carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act.

(4) The information described in subdivision (3)(c) of this section, as it is listed in the data base, creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage for a claimed covered event.

(5) The information required under subsection (3) of this section and the presumption provided in subsection (4) of this section are solely for the purpose of establishing premiums for workers' compensation insurance and shall not affect liability under the Nebraska Workers' Compensation Act or compliance efforts pursuant to section 48-145.01.

(6) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

Source: Laws 2009, LB162, § 6; Laws 2019, LB139, § 1.
Effective date September 1, 2019.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

Nebraska Workers' Compensation Act, see section 48-1,110.

ARTICLE 22

NON-ENGLISH-SPEAKING EMPLOYEES

Section

48-2213. Meatpacking industry worker rights coordinator; established; powers and duties.

48-2213 Meatpacking industry worker rights coordinator; established; powers and duties.

(1) The position of meatpacking industry worker rights coordinator is established within the department. The coordinator shall be appointed by the commissioner.

(2) The duties of the coordinator shall be to inspect and review the practices and procedures of meatpacking operations in the State of Nebraska as they relate to the provisions of the Governor's Nebraska Meatpacking Industry Workers Bill of Rights, which rights are outlined as follows:

- (a) The right to organize;
- (b) The right to a safe workplace;
- (c) The right to adequate facilities and the opportunity to use them;
- (d) The right to complete information;
- (e) The right to understand the information provided;
- (f) The right to existing state and federal benefits and rights;
- (g) The right to be free from discrimination;
- (h) The right to continuing training, including training of supervisors;
- (i) The right to compensation for work performed; and
- (j) The right to seek state help.

(3) The coordinator and his or her designated representatives shall have access to all meatpacking operations in the State of Nebraska at any time meatpacking products are being processed and industry workers are on the job.

(4) Necessary office space, furniture, equipment, and supplies as well as necessary assistance for the coordinator shall be provided by the commissioner.

(5) Preference shall be given to applicants for the coordinator position who are fluent in the Spanish language.

(6) The coordinator shall, on or before December 1 of each year, submit a report to the members of the Legislature and the Governor regarding any recommended actions the coordinator deems necessary or appropriate to provide for the fair treatment of workers in the meatpacking industry. The

report submitted to the members of the Legislature shall be submitted electronically.

Source: Laws 2000, LB 1363, § 4; R.S.Supp.,2002, § 81-404; Laws 2003, LB 418, § 7; Laws 2012, LB782, § 65; Laws 2019, LB359, § 8. Effective date September 1, 2019.

**ARTICLE 25
CONVEYANCE SAFETY ACT**

Section

- 48-2501. Transferred to section 81-5,210.
- 48-2502. Transferred to section 81-5,211.
- 48-2503. Transferred to section 81-5,212.
- 48-2504. Transferred to section 81-5,213.
- 48-2506. Transferred to section 81-5,214.
- 48-2507. Transferred to section 81-5,215.
- 48-2508. Transferred to section 81-5,216.
- 48-2509. Transferred to section 81-5,217.
- 48-2510. Transferred to section 81-5,218.
- 48-2511. Transferred to section 81-5,219.
- 48-2512. Transferred to section 81-5,220.
- 48-2512.01. Transferred to section 81-5,221.
- 48-2513. Transferred to section 81-5,222.
- 48-2514. Transferred to section 81-5,223.
- 48-2515. Transferred to section 81-5,224.
- 48-2516. Transferred to section 81-5,225.
- 48-2517. Transferred to section 81-5,226.
- 48-2518. Transferred to section 81-5,227.
- 48-2519. Transferred to section 81-5,228.
- 48-2520. Transferred to section 81-5,229.
- 48-2521. Transferred to section 81-5,230.
- 48-2522. Transferred to section 81-5,231.
- 48-2523. Transferred to section 81-5,232.
- 48-2524. Transferred to section 81-5,233.
- 48-2525. Transferred to section 81-5,234.
- 48-2526. Transferred to section 81-5,235.
- 48-2527. Transferred to section 81-5,236.
- 48-2528. Transferred to section 81-5,237.
- 48-2529. Transferred to section 81-5,238.
- 48-2530. Transferred to section 81-5,239.
- 48-2531. Transferred to section 81-5,240.
- 48-2532. Transferred to section 81-5,241.
- 48-2533. Transferred to section 81-5,242.

48-2501 Transferred to section 81-5,210.

48-2502 Transferred to section 81-5,211.

48-2503 Transferred to section 81-5,212.

48-2504 Transferred to section 81-5,213.

48-2506 Transferred to section 81-5,214.

48-2507 Transferred to section 81-5,215.

48-2508 Transferred to section 81-5,216.

48-2509 Transferred to section 81-5,217.

- 48-2510 Transferred to section 81-5,218.
- 48-2511 Transferred to section 81-5,219.
- 48-2512 Transferred to section 81-5,220.
- 48-2512.01 Transferred to section 81-5,221.
- 48-2513 Transferred to section 81-5,222.
- 48-2514 Transferred to section 81-5,223.
- 48-2515 Transferred to section 81-5,224.
- 48-2516 Transferred to section 81-5,225.
- 48-2517 Transferred to section 81-5,226.
- 48-2518 Transferred to section 81-5,227.
- 48-2519 Transferred to section 81-5,228.
- 48-2520 Transferred to section 81-5,229.
- 48-2521 Transferred to section 81-5,230.
- 48-2522 Transferred to section 81-5,231.
- 48-2523 Transferred to section 81-5,232.
- 48-2524 Transferred to section 81-5,233.
- 48-2525 Transferred to section 81-5,234.
- 48-2526 Transferred to section 81-5,235.
- 48-2527 Transferred to section 81-5,236.
- 48-2528 Transferred to section 81-5,237.
- 48-2529 Transferred to section 81-5,238.
- 48-2530 Transferred to section 81-5,239.
- 48-2531 Transferred to section 81-5,240.
- 48-2532 Transferred to section 81-5,241.
- 48-2533 Transferred to section 81-5,242.

CHAPTER 49

LAW

Article.

5. Publication and Distribution of Session Laws and Journals. 49-506.
14. Nebraska Political Accountability and Disclosure Act.
 - (d) Conflicts of Interest. 49-1499.03.
 - (e) Nebraska Accountability and Disclosure Commission. 49-14,126.

ARTICLE 5

PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS

Section

49-506. Distribution by Secretary of State.

49-506 Distribution by Secretary of State.

After the Secretary of State has made the distribution provided by section 49-503, he or she shall deliver additional copies of the session laws and the journal of the Legislature pursuant to this section in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

One copy of the session laws shall be delivered to the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the State Fire Marshal, the Department of Administrative Services, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environment and Energy, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Transportation, the Department of Veterans' Affairs, the Department of Natural Resources, the Military Department, the Nebraska State Patrol, the Nebraska Commission on Law Enforcement and Criminal Justice, each of the Nebraska state colleges, the Game and Parks Commission, the Nebraska Library Commission, the Nebraska Liquor Control Commission, the Nebraska Accountability and Disclosure Commission, the Public Service Commission, the State Real Estate Commission, the Nebraska State Historical Society, the Public Employees Retirement Board, the Risk Manager, the Legislative Fiscal Analyst, the Public Counsel, the materiel division of the Department of Administrative Services, the State Records Administrator, the budget division of the Department of Administrative Services, the Tax Equalization and Review Commission, the inmate library at all state penal and correctional institutions, the Commission on Public Advocacy, and the Library of Congress; two copies to the Governor, the Secretary of State, the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, and the Coordinating Commission for Postsecondary Education, one of which shall be for use by the community colleges; three copies to the Department of Health and Human Services; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General; nine copies to

the Revisor of Statutes; sixteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law.

One copy of the journal of the Legislature shall be delivered to the Governor, the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the Nebraska State Historical Society, the Legislative Fiscal Analyst, the Tax Equalization and Review Commission, the Commission on Public Advocacy, and the Library of Congress; two copies to the Secretary of State, the Commission of Industrial Relations, and the Nebraska Workers' Compensation Court; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General and the Revisor of Statutes; eight copies to the Clerk of the Legislature; thirteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law. The remaining copies shall be delivered to the State Librarian who shall use the same, so far as required for exchange purposes, in building up the State Library and in the manner specified in sections 49-507 to 49-509.

Source: Laws 1907, c. 78, § 6, p. 290; R.S.1913, § 3738; C.S.1922, § 3131; C.S.1929, § 49-506; R.S.1943, § 49-506; Laws 1947, c. 185, § 4, p. 611; Laws 1961, c. 243, § 2, p. 725; Laws 1969, c. 413, § 1, p. 1419; Laws 1972, LB 1284, § 17; Laws 1987, LB 572, § 2; Laws 1991, LB 663, § 34; Laws 1991, LB 732, § 117; Laws 1993, LB 3, § 34; Laws 1995, LB 271, § 6; Laws 1996, LB 906, § 1; Laws 1996, LB 1044, § 277; Laws 1999, LB 36, § 3; Laws 2000, LB 534, § 3; Laws 2000, LB 900, § 240; Laws 2000, LB 1085, § 2; Laws 2007, LB296, § 222; Laws 2007, LB334, § 6; Laws 2017, LB339, § 176; Laws 2019, LB302, § 54.
Operative date July 1, 2019.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(d) CONFLICTS OF INTEREST

Section

49-1499.03. Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,126. Commission; violation; orders; civil penalty; costs of hearing.

(d) CONFLICTS OF INTEREST

49-1499.03 Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required; nepotism; restrictions on supervision of family members.

(1)(a) An official of a political subdivision designated in section 49-1493 who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(ii) Deliver a copy of the statement to the commission and to the person in charge of keeping records for the political subdivision who shall enter the statement onto the public records of the subdivision.

(b) The official shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(c) This subsection does not prevent such a person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made. A person acting pursuant to this subdivision shall report the occurrence to the commission.

(2)(a) Any person holding an elective office of a city or village not designated in section 49-1493 and any person holding an elective office of a school district who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(ii) Deliver a copy of the statement to the person in charge of keeping records for the city, village, or school district who shall enter the statement onto the public records of the city, village, or school district; and

(iii) Except as otherwise provided in subsection (3) of this section, abstain from participating or voting on the matter in which the person holding elective office has a conflict of interest.

(b) The person holding elective office may apply to the commission for an opinion as to whether the person has a conflict of interest.

(3)(a) This section does not prevent a person holding an elective office of any city, village, or school district from making or participating in the making of a governmental decision:

(i) To the extent that the individual's participation is legally required for the action or decision to be made; or

(ii) If the potential conflict of interest is based on a business association and (A) such business association is an association of cities and villages or school districts, (B) the city, village, or school district is a member of such association, and (C) the business association exists only as the result of such person holding elective office.

(b) A person holding elective office of any city subject to subsection (1) of this section who is acting pursuant to this subsection shall report the occurrence as provided in subdivisions (1)(a)(i) and (ii) of this section.

(c) A person subject to subsection (2) of this section who is acting pursuant to this subsection shall report the occurrence as provided in subdivisions (2)(a)(i) and (ii) of this section.

(4) Matters involving an interest in a contract are governed either by sections 49-14,102 and 49-14,103 or by sections 49-14,103.01 to 49-14,103.06. Matters involving the hiring of an immediate family member are governed by section 49-1499.04. Matters involving nepotism or the supervision of a family member by an official or employee in the executive branch of state government are governed by section 49-1499.07.

Source: Laws 2001, LB 242, § 14; Laws 2005, LB 242, § 42; Laws 2009, LB322, § 3; Laws 2019, LB411, § 66.
Operative date September 1, 2019.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,126 Commission; violation; orders; civil penalty; costs of hearing.

The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (1) Cease and desist from the violation;
- (2) File any report, statement, or other information as required;
- (3) Pay a civil penalty of not more than five thousand dollars for each violation of the act, rule, or regulation; or
- (4) Pay the costs of the hearing in a contested case if the violator did not appear at the hearing personally or by counsel.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5; Laws 2011, LB176, § 1; Laws 2013, LB79, § 32; Laws 2019, LB411, § 67.
Operative date September 1, 2019.

CHAPTER 50 LEGISLATURE

Article.

4. Legislative Council. 50-419, 50-419.03.
5. Bioscience Steering Committee. 50-504 to 50-508.
12. Legislative Performance Audit Act. 50-1204 to 50-1209.

ARTICLE 4 LEGISLATIVE COUNCIL

Section

- 50-419. Fiscal analyst; powers and duties.
50-419.03. Long-term fiscal trends; legislative findings and declarations.

50-419 Fiscal analyst; powers and duties.

(1) The Legislative Fiscal Analyst shall provide fiscal and budgetary information and assistance to the Legislature and the Appropriations Committee. During sessions of the Legislature he or she shall work under the direction of the Appropriations Committee of the Legislature. During the interim between legislative sessions he or she shall work under the direction of the Executive Board of the Legislative Council.

The Legislative Fiscal Analyst shall provide:

- (a) Factual information and recommendations concerning the financial operations of state government;
- (b) Evaluation of the requests for appropriations contained in the executive budget and recommendations thereon;
- (c) Studies of capital outlay needs for the orderly and coordinated development of state institutions and institutional programs authorized, if not otherwise provided by law;
- (d) Plans for legislative appropriation and control of funds, with pre-session analysis of budgetary requirements; and
- (e) The following cycle of analyses of long-term fiscal sustainability, beginning in FY2020-21:
 - (i) In even-numbered years, the joint revenue volatility report required under section 50-419.02;
 - (ii) In odd-numbered years, a budget stress test comparing estimated future revenue to and expenditure from major funds and tax types under various potential economic conditions; and
 - (iii) Every four years, a long-term budget for programs appropriated for major funds and tax types.

(2) His or her duties shall also include examining or auditing functions or services authorized by the Legislature to determine if funds are expended according to legislative intent and whether improvements in organization and performance are possible. The examining function shall also include the appraisal of functions for needed reforms.

(3) His or her duties shall be to coordinate his or her activities with the budget officer of the Department of Administrative Services.

(4) All information and reports of the fiscal analyst and Appropriations Committee shall be available to any and all members of the Legislature.

(5) The Legislative Fiscal Analyst shall provide revenue-forecasting information and assistance to the Legislature, the Revenue Committee of the Legislature, and the Appropriations Committee of the Legislature. For the purposes of this subsection, he or she shall work under the direction of the Revenue Committee of the Legislature and the Appropriations Committee of the Legislature. The revenue-forecasting information provided under this subsection shall include:

(a) The estimated revenue receipts for each year of the following biennium, including comparisons of current estimates for:

- (i) Each major tax type to long-term trends for that tax type;
- (ii) Federal fund receipts to long-term federal fund trends; and
- (iii) Tax collections and federal fund receipts to long-term trends;

(b) General Fund reserve requirements;

(c) A list of express obligations; and

(d) A summary of economic conditions affecting the State of Nebraska.

Source: Laws 1961, c. 253, § 2, p. 746; Laws 1967, c. 595, § 3, p. 2027; Laws 1977, LB 193, § 2; Laws 1984, LB 664, § 1; Laws 1986, LB 996, § 4; Laws 1992, LB 988, § 16; Laws 2019, LB713, § 2. Effective date September 1, 2019.

Cross References

Nebraska Economic Forecasting Advisory Board, see sections 77-27,156 to 77-27,159.

50-419.03 Long-term fiscal trends; legislative findings and declarations.

The Legislature finds and declares that:

(1) Research conducted since 2009 by the University of Nebraska at the request of the Legislature's Planning Committee shows (a) the population of Nebraska is becoming more concentrated in the most populous counties, with two-thirds of the counties showing dramatic and sustained population loss, (b) the population of Nebraska is aging, and (c) the population of Nebraska is becoming more racially and ethnically diverse;

(2) It is in the best interest of the economy of Nebraska to anticipate long-term fiscal trends;

(3) The Legislative Fiscal Analyst, in partnership with the Legislature's Planning Committee and the University of Nebraska, has a tool to project the long-term fiscal impact of revenue and expenditure measures and changes in federal policy; and

(4) The state is constitutionally prohibited from incurring debt, which, due to downturns in revenue, has caused the Legislature to deplete the cash reserves by more than one-half during the last two biennial budgets. The restoration of cash reserves over the next two biennial budgets is essential if the state is to

meet its obligations and adapt to the challenges projected by data accumulated by the Legislature's Planning Committee.

Source: Laws 2019, LB713, § 1.
Effective date September 1, 2019.

ARTICLE 5 BIOSCIENCE STEERING COMMITTEE

Section

- 50-504. Repealed. Laws 2019, LB1, § 1.
- 50-505. Repealed. Laws 2019, LB1, § 1.
- 50-506. Repealed. Laws 2019, LB1, § 1.
- 50-507. Repealed. Laws 2019, LB1, § 1.
- 50-508. Repealed. Laws 2019, LB1, § 1.

50-504 Repealed. Laws 2019, LB1, § 1.

50-505 Repealed. Laws 2019, LB1, § 1.

50-506 Repealed. Laws 2019, LB1, § 1.

50-507 Repealed. Laws 2019, LB1, § 1.

50-508 Repealed. Laws 2019, LB1, § 1.

ARTICLE 12 LEGISLATIVE PERFORMANCE AUDIT ACT

Section

- 50-1204. Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.
- 50-1205.01. Performance audits; standards.
- 50-1209. Tax incentive performance audits; schedule; contents.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Auditor; duties.

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the Legislative Performance Audit Committee shall be elected by majority vote. For purposes of tax incentive performance audits authorized in section 50-1209, the committee shall include as nonvoting members the chairperson of the Revenue Committee of the Legislature or his or her designee and one other member of the Revenue Committee, as selected by the Revenue Committee. The Legislative Performance Audit Committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Auditor shall ensure that performance audit work conducted by the office conforms with performance audit standards contained in

the Government Auditing Standards (2018 Revision) as required in section 50-1205.01. The office shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The office shall be the custodian of all records generated by the committee or office except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The office shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The office shall operate under the general direction of the committee.

Source: Laws 1992, LB 988, § 4; Laws 2003, LB 607, § 6; Laws 2006, LB 588, § 2; Laws 2006, LB 956, § 4; Laws 2008, LB822, § 1; Laws 2013, LB39, § 4; Laws 2013, LB40, § 1; Laws 2015, LB538, § 2; Laws 2019, LB561, § 1.

Effective date September 1, 2019.

50-1205.01 Performance audits; standards.

(1) Except as provided in subsections (2) and (3) of this section, performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2018 Revision), published by the Comptroller General of the United States, Government Accountability Office.

(2) Standards requiring continuing education for employees of the office shall be met as practicable based on the availability of training funds.

(3) The frequency of the required external quality control review shall be determined by the committee.

(4) At the beginning of each biennial legislative session, the Legislative Auditor shall create a plan for meeting such standards and provide the plan to the chairperson of the Legislative Performance Audit Committee.

Source: Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2; Laws 2013, LB40, § 2; Laws 2017, LB210, § 1; Laws 2019, LB561, § 2.

Effective date September 1, 2019.

50-1209 Tax incentive performance audits; schedule; contents.

(1) Tax incentive performance audits shall be conducted by the office pursuant to this section on the following tax incentive programs:

- (a) The Beginning Farmer Tax Credit Act;
- (b) The Nebraska Advantage Act;
- (c) The Nebraska Advantage Microenterprise Tax Credit Act;
- (d) The Nebraska Advantage Research and Development Act;
- (e) The Nebraska Advantage Rural Development Act;
- (f) The Nebraska Job Creation and Mainstreet Revitalization Act;
- (g) The New Markets Job Growth Investment Act; and

(h) Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider

whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

(2) The office shall develop a schedule for conducting tax incentive performance audits and shall update the schedule annually. The schedule shall ensure that each tax incentive program is reviewed at least once every five years.

(3) Each tax incentive performance audit conducted by the office pursuant to this section shall include the following:

(a) An analysis of whether the tax incentive program is meeting the following goals:

(i) Strengthening the state's economy overall by:

(A) Attracting new business to the state;

(B) Expanding existing businesses;

(C) Increasing employment, particularly employment of full-time workers. The analysis shall consider whether the job growth in those businesses receiving tax incentives is at least ten percent above industry averages;

(D) Creating high-quality jobs; and

(E) Increasing business investment;

(ii) Revitalizing rural areas and other distressed areas of the state;

(iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial firms, high-tech firms, and renewable energy firms; and

(iv) Any other program-specific goals found in the statutes for the tax incentive program being evaluated;

(b) An analysis of the economic and fiscal impacts of the tax incentive program. The analysis may take into account the following considerations in addition to other relevant factors:

(i) The costs per full-time worker. When practical and applicable, such costs shall be considered in at least the following two ways:

(A) By an estimation including the minimum investment required to qualify for benefits; and

(B) By an estimation including all investment;

(ii) The extent to which the tax incentive changes business behavior;

(iii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and

(iv) A comparison to the results of other economic development strategies with similar goals, other policies, or other incentives;

(c) An assessment of whether adequate protections are in place to ensure the fiscal impact of the tax incentive does not increase substantially beyond the state's expectations in future years;

(d) An assessment of the fiscal impact of the tax incentive on the budgets of local governments, if applicable; and

(e) Recommendations for any changes to statutes or rules and regulations that would allow the tax incentive program to be more easily evaluated in the future, including changes to data collection, reporting, sharing of information, and clarification of goals.

(4) For purposes of this section:

(a) Distressed area means an area of substantial unemployment as determined by the Department of Labor pursuant to the Nebraska Workforce Innovation and Opportunity Act;

(b) Full-time worker means an individual (i) who usually works thirty-five hours per week or more, (ii) whose employment is reported to the Department of Labor on two consecutive quarterly wage reports, and (iii) who earns wages equal to or exceeding the state minimum wage;

(c) High-quality job means a job that:

(i) Averages at least thirty-five hours of employment per week;

(ii) Is reported to the Department of Labor on two consecutive quarterly wage reports; and

(iii) Earns wages that are at least ten percent higher than the statewide industry sector average and that equal or exceed:

(A) One hundred ten percent of the Nebraska average weekly wage if the job is in a county with a population of less than one hundred thousand inhabitants; or

(B) One hundred twenty percent of the Nebraska average weekly wage if the job is in a county with a population of one hundred thousand inhabitants or more;

(d) High-tech firm means a person or unitary group that has a location with any of the following four-digit code designations under the North American Industry Classification System as assigned by the Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112, 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

(e) Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of each year;

(f) New business means a person or unitary group participating in a tax incentive program that did not pay income taxes or wages in the state more than two years prior to submitting an application under the tax incentive program. For any tax incentive program without an application process, new business means a person or unitary group participating in the program that did not pay income taxes or wages in the state more than two years prior to the first day of the first tax year for which a tax benefit was earned;

(g) Renewable energy firm means a person or unitary group that has a location with any of the following six-digit code designations under the North American Industry Classification System as assigned by the Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160, 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333, 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310, 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210, 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111, 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510, 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730, or 562213;

(h) Rural area means any village or city of the second class in this state or any county in this state with fewer than twenty-five thousand residents; and

(i) Unitary group has the same meaning as in section 77-2734.04.

Source: Laws 1992, LB 988, § 9; Laws 2003, LB 607, § 12; Laws 2013, LB39, § 7; Laws 2015, LB538, § 5; Laws 2018, LB936, § 1; Laws 2019, LB334, § 5.

Effective date September 1, 2019.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

Beginning Farmer Tax Credit Act, see section 77-5201.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

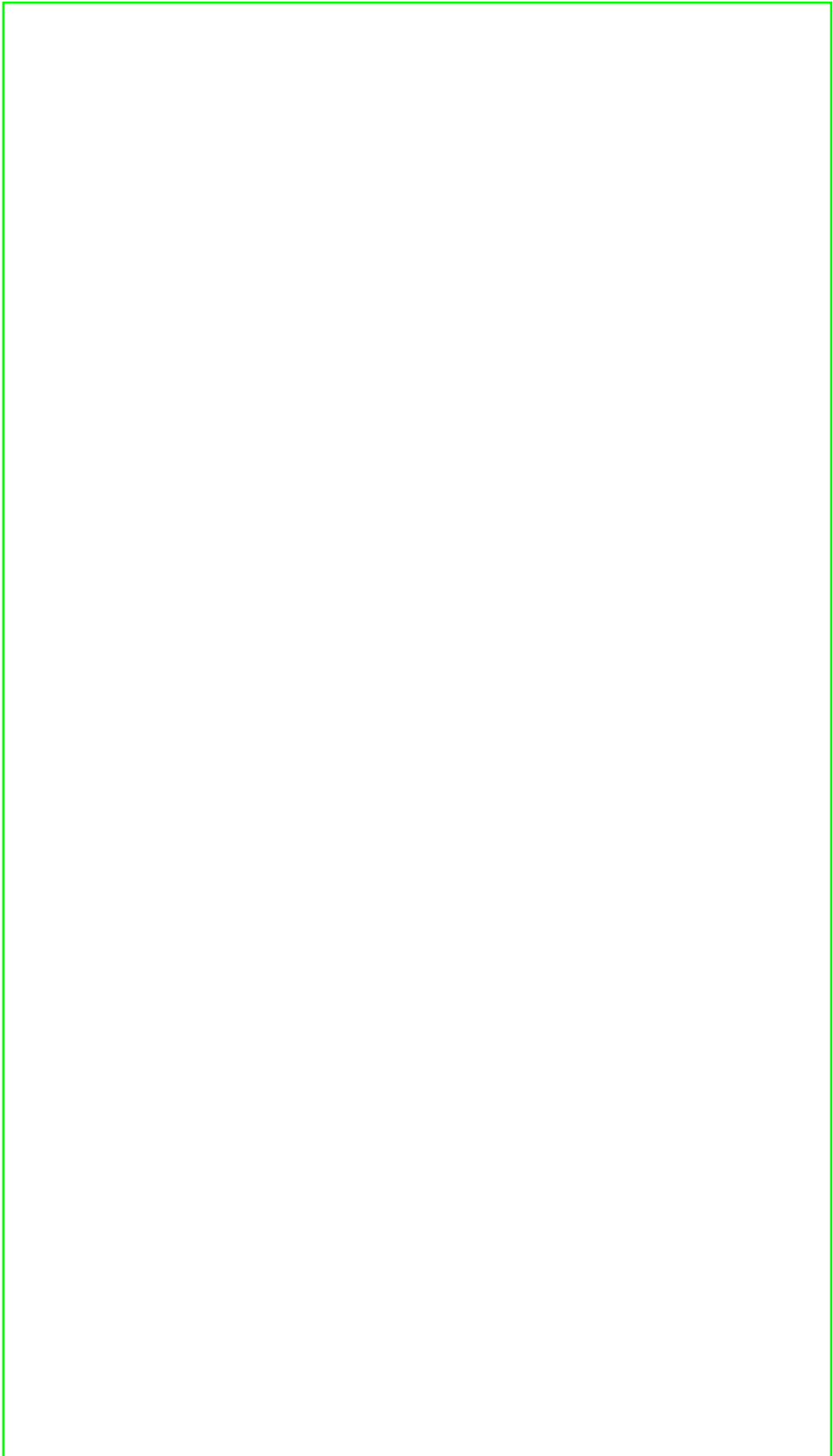
Nebraska Advantage Research and Development Act, see section 77-5801.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

Nebraska Workforce Innovation and Opportunity Act, see section 48-3301.

New Markets Job Growth Investment Act, see section 77-1101.



CHAPTER 52

LIENS

Article.

9. Petroleum Products Lien. 52-903.

ARTICLE 9

PETROLEUM PRODUCTS LIEN

Section

52-903. Lien; effect of filing; sale of crop, effect; enforcement.

52-903 Lien; effect of filing; sale of crop, effect; enforcement.

From and after the date of the filing of the lien as provided in section 52-902, the person claiming the lien shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant was furnished to the amount of the purchase price of such fuel or lubricant so furnished to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crops so produced, such person shall notify the purchaser or consignee that such fuel or lubricant bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of such purchaser or consignee. In the event any portion of such crops is sold or consigned with the consent or knowledge of the person entitled to a lien thereon within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof unless the person entitled to such lien notifies the purchaser in writing thereof. A lien created under section 52-901 shall be treated in all respects as an agricultural lien as provided in article 9, Uniform Commercial Code, and may be enforced in the manner and form provided for the enforcement of secured transactions as provided in article 9, Uniform Commercial Code. Effective January 1, 2015, this section applies to a lien created under section 52-901 regardless of when the lien was created.

Source: Laws 1957, c. 226, § 3, p. 776; Laws 1969, c. 436, § 5, p. 1465; Laws 1987, LB 314, § 1; Laws 1999, LB 550, § 19; Laws 2001, LB 54, § 11; Laws 2014, LB750, § 8; Laws 2019, LB318, § 1. Effective date September 1, 2019.