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REISSUE REVISED STATUTES

REVISED STATUTES
OF
NEBRASKA

2008 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 59, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2008

Errata:

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

Reissue of Volumes 1 to 6

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

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2008 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the Ninety-seventh Legislature, First Special Session, 2001, through the One Hundredth Legislature, First Special Session, 2008, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

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Lincoln, Nebraska
December 1, 2008

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44-359.

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

44-516.

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

44-2701.

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

44-2702.

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

44-2816.

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

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

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

44-2825.

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

44-6408.

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

44-6413.

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

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

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

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

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

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

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

46-226.

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

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

46-229.02.

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

46-229.04.

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

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

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

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

46-703.

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

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48-101.

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

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

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

48-102.

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

48-103.

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

48-120.

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

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

48-121.

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

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

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

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

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

''Earning power,'' as used in subsection (2) of this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the

work, as well as the ability of the worker to earn wages in the employment in which the worker is engaged or for which he or she is fitted. Weichel v. Store Kraft Mfg. Co., 10 Neb. App. 276, 634 N.W.2d 276 (2001).

48-125.

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

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

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

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

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

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

48-130.

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

48-133.

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

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

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

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

48-134.

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

48-137.

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

48-139.

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

48-140.

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

48-141.

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

48-144.01.

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

48-144.04.

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

48-145.

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

48-148.

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

48-151.

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

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

48-162.01.

An illegal immigrant's avowed intent to remain an unauthorized worker in the United States is contrary to the statutory purpose of this section of returning an employee to suitable employment. Ortiz v. Cement Products, 270 Neb. 787, 708 N.W.2d 610 (2005).

Pursuant to Neb. Evid. R. 301, in all cases not otherwise provided for by statute or by the Nebraska Evidence Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. This rule applies to the rebuttable presumption that an opinion regarding loss of earning capacity expressed by a vocational rehabilitation counselor appointed or selected pursuant to this section is correct. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-168.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), does not apply in a workers' compensation case where the rules of evidence do not apply. Veatch v. American Tool, 267 Neb. 711, 676 N.W.2d 730 (2004).

Technical or formal rules of procedure do not bind the Nebraska Workers' Compensation Court other than as provided in the Nebraska Workers' Compensation Act. Armstrong v. Watkins Concrete Block, 12 Neb. App. 729, 685 N.W.2d 495 (2004).

48-179.

A trial court's order reserving ruling on issues of permanent impairment, if any, and entitlement to vocational rehabilitation benefits is not a final order. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

An appeal to a review panel of the Workers' Compensation Court must be taken from a final order. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

Generally, when multiple issues are presented to a trial court for simultaneous disposition in the same proceeding and the court decides some of the issues, while reserving some issue or issues for later determination, the court's determination of less than all the issues is an interlocutory order and is not a final order for the purpose of an appeal. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

The issue of whether an appellant was entitled to interest on his entire award should have been raised on appeal or cross-appeal from the original award, and the appellant's failure to do so precludes him from raising the issue for the first time on appeal after the original cause had been remanded on a separate issue. Dietz v. Yellow Freight Sys., 269 Neb. 990, 697 N.W.2d 693 (2005).

Under this section, the appeal from the single judge to the review panel must be taken from a final order. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

While a Workers' Compensation Court review panel has the statutory authority to remand a case, it exceeds that authority when it remands a case with directions to reconsider a decision without first concluding that the single judge made an error of fact or law. An order of a single judge of the Workers' Compensation Court may be ''contrary to law'' within the meaning of this section if the order fails to satisfy the requirements of Workers' Comp. Ct. R. of Proc. 11. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

An appellate court does not have jurisdiction over an appeal from a decision by the Nebraska Workers' Compensation Court, unless such decision has been reviewed by a three-judge panel of the Workers' Compensation Court as provided in the Nebraska Workers' Compensation Act. Lyle v. Drivers Mgmt., Inc., 12 Neb. App. 350, 673 N.W.2d 237 (2004).

Under this section, an appellate court cannot consider errors of the trial judge which were not assigned to the Workers' Compensation Court review panel. Cochran v. Bill's Trucking, 10 Neb. App. 48, 624 N.W.2d 338 (2001).

48-199.

Under former law, in order to harmonize this section and sections 48-1,102 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. Soto v. State, 270 Neb. 40, 699 N.W.2d 819 (2005).

48-1,102.

Under former law, in order to harmonize this section and sections 48-199 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. Soto v. State, 270 Neb. 40, 699 N.W.2d 819 (2005).

Under former law, with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the 30-day period specified in subsection (1) of section 48-125 does not begin until the first day

after the judgment becomes final on which the State could request review and appropriation pursuant to this section during a regular session of the Legislature. A waiting-time penalty may be assessed pursuant to section 48-125 if payment is not made within 30 calendar days thereafter. Soto v. State, 269 Neb. 337, 693 N.W.2d 491 (2005).

48-425.

This section does not apply to employer-independent contractor relationships. Semler v. Sears, Roebuck, & Co., 268 Neb. 857, 689 N.W.2d 327 (2004).

48-602.

Under former law, wages may include noncash benefits under certain circumstances. In-kind benefits received in return for services provided may constitute wages for purposes of determining eligibility for unemployment compensation benefits. Lecuona v. McCord, 270 Neb. 213, 699 N.W.2d 403 (2005).

48-627.

Availability is required for eligibility to receive unemployment compensation benefits. Robinson v. Commissioner of Labor, 267 Neb. 579, 675 N.W.2d 683 (2004).

Without an order from the sentencing court granting the privilege to leave the jail for work, an inmate was not ''available'' for work under this section. Robinson v. Commissioner of Labor, 267 Neb. 579, 675 N.W.2d 683 (2004).

48-802.

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of section 48-825, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in this section. Operating Engrs. Local 571 v. City of Plattsmouth, 265 Neb. 817, 660 N.W.2d 480 (2003).

48-816.

A deviation clause in a teacher contract falls under the category of ''wages, hours, and other terms of employment, or any question arising thereunder,'' as stated in subsection (1) of this section, and is a subject of mandatory bargaining. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

48-818.

A prevalence determination by the Commission of Industrial Relations is a subjective determination, and the standard inherent in the word ''prevalent'' will be one of general practice, occurrence, or acceptance. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

A valid prevalence analysis by the Commission of Industrial Relations does not require as a prerequisite a complete identity of provisions in the array. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

When discussing the Commission of Industrial Relations' authority under this section, the Nebraska Supreme Court has acknowledged that a prevalent wage rate to be determined by the commission must almost invariably be determined after consideration of a combination of factors. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

48-819.01.

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

48-825.

In an appellate court's review of orders and decisions of the Commission of Industrial Relations involving an industrial dispute over wages and conditions of employment, the appellate court's standard of review is as

follows: Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) If the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of this section, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in section 48-802. Operating Engrs. Local 571 v. City of Plattsmouth, 265 Neb. 817, 660 N.W.2d 480 (2003).

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under subsection (2) of this section and section 48-819.01. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under subsection (2) of this section and section 48-819.01. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

48-1114.

The unlawful practice, the opposition to which is protected by subdivision (3) of this section, is that of the employer and not that of fellow employees. Wolfe v. Becton Dickinson & Co., 266 Neb. 53, 662 N.W.2d 599 (2003).

48-1231.

In a wage claim brought under section 15-841 against a city of the primary class, there is nothing in the plain language of this section that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. Rauscher v. City of Lincoln, 269 Neb. 267, 691 N.W.2d 844 (2005).

48-1232.

The amount of penalty ordered to be paid to a fund to be distributed to the common schools of the state is a matter left to the discretion of the trial court, subject to the limitations prescribed by statute. Kinney v. H.P. Smith Ford, 266 Neb. 591, 667 N.W.2d 529 (2003).

52-118.01.

Under the facts of the case, evidence of a contractual relationship existed to create an exemption from the notice requirements of this section. Gerhold Concrete Co. v. St. Paul Fire & Marine Ins., 269 Neb. 692, 695 N.W.2d 665 (2005).

52-401.

By perfecting the lien created under this section before the tort-feasor pays the judgment or settlement to the patient, the health care provider creates an obligation on the tort-feasor to ensure that the provider's bill will be satisfied from the funds that the tort-feasor owes to the patient. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

If a tort-feasor's insurer impairs a lien created under this section, then the insurer is directly liable to the health care provider for the amount that would have been necessary to satisfy the lien. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

In this section, the phrase ''usual and customary charges'' acts as a cap; it prevents the lien from being an amount greater than what the health care provider typically charges other patients for the services that it provided to the injured party. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Under this section, the lien is equal to the debt still owed to the health care provider for its usual and customary charges. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

A hospital lien which attaches prior to a patient's filing for bankruptcy relief is unaffected by the patient's discharge in bankruptcy. An insurance company breaches its duty to a hospital not to impair the hospital's rights under its lien by settling directly with a patient rather than making payment to the hospital. Alegent Health v. American Family Ins., 265 Neb. 312, 656 N.W.2d 906 (2003).

The lien of a physician, nurse, hospital, or other health care provider cannot exceed the amount the health care provider agreed to accept for the services rendered to a patient, even if the usual and customary charge for such

services is greater than that sum. Midwest Neurosurgery v. State Farm Ins. Cos., 12 Neb. App. 328, 673 N.W.2d 228 (2004).

The underlying common-law contractual obligation between a patient and a medical provider is not affected by a statutory lien. If a patient receives medical services, he or she is always responsible for payment irrespective of whether there is a financially responsible tort-feasor against whom a statutory lien can be asserted in the event of a settlement or judgment in the patient's favor. The patient's personal liability for medical services remains intact irrespective of the lien statute. In re Conservatorship of Marshall, 10 Neb. App. 589, 634 N.W.2d 300 (2001).

53-169.01.

The interest forbidden by this section is a financial or business interest. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 269 Neb. 401, 693 N.W.2d 539 (2005).

While the forbidden interest in this section is worded as that of the manufacturer in the wholesaler and not the interest of the wholesaler in the manufacturer, the obvious intent of the Legislature is to forbid both types of interests. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 269 Neb. 401, 693 N.W.2d 539 (2005).

Amendments made to this section by Laws 2007, LB 578, contained a Grandfather Clause that violated the Equal Protection Clause and the Privileges and Immunities Clause of the United States Constitution and the Grandfather Clause was not severable from the other amendments. The section as amended is unconstitutional. Southern Wine & Spirits of America Inc. v. Heineman, 534 F.Supp.2d 1001 (D. Neb. 2008).

54-611.

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

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

55-160.

Under former law, the term ''workday'' for purposes of military leave means any 24-hour period in which work is done. Hall v. City of Omaha, 266 Neb. 127, 663 N.W.2d 97 (2003).

59-829.

The purpose of this section is to achieve uniform application of the state and federal laws regarding monopolistic practices. The goal is to establish a uniform standard of conduct so that businesses will know what conduct is permitted and to protect the consumer from illegal conduct. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

59-1604.

As related to a course of action for any person injured in violation of this section, section 59-1609 contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

This section allows any person who is injured by a violation of sections 59-1602 to 59-1606 which directly or indirectly affects the people of Nebraska to bring a civil action to recover damages. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

59-1609.

As related to a cause of action for any person injured in violation of section 59-1604, this section contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

60-498.01.

A report that does not contain the affirmation of an ''arresting peace officer'' that the facts recited in the report are true is not a proper ''sworn report'' as required by this section. Arndt v. Department of Motor Vehicles, 270 Neb. 172, 699 N.W.2d 39 (2005).

An arresting officer's sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction upon the Department of Motor Vehicles to revoke an operator's license. Hahn v. Neth, 270 Neb. 164, 699 N.W.2d 32 (2005).

Although this section does not allow a motorist to challenge the validity of the initial traffic stop, it does not violate due process because the Fourth Amendment exclusionary rule is not applicable in civil license revocation proceedings. Chase v. Neth, 269 Neb. 882, 697 N.W.2d 675 (2005).

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Although this section requires the ''sworn report'' required by subsection (2) of this section to include the ''reasons for [the] arrest,'' an arresting officer need not specifically delineate on the sworn report all of the information contained on an attached probable cause form, so long as the sworn report provides adequate notice that one is being accused of driving under the influence and/or failure of a chemical test. Taylor v. Wimes, 10 Neb. App. 432, 632 N.W.2d 366 (2001).

60-6,121.

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and the discretionary immunity exception of section 13-910 does not apply. Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

60-6,196.

A sentence of probation is excessively lenient when record shows a history of alcohol-related motor vehicle offenses spanning more than 30 years, an extreme alcohol addiction, and a lack of respect for court orders. State v. Rice, 269 Neb. 717, 695 N.W.2d 418 (2005).

The Omaha Municipal Code conflicts with this section. State v. Loyd, 265 Neb. 232, 655 N.W.2d 703 (2003).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section, the record must show that the defendant entered the guilty plea to the charge. State v. Schulte, 12 Neb. App. 924, 687 N.W.2d 411 (2004).

For purposes of this section, substitution of ''revocation'' with ''suspension'' has no prejudicial effect. State v. Mulinix, 12 Neb. App. 836, 687 N.W.2d 1 (2004).

Alcohol-related violations of this section may be proved either by establishing that one was in actual physical control of a motor vehicle while under the influence or by establishing that one was in actual physical control of a motor vehicle while having more than the prohibited amount of alcohol in his or her body. State v. Robinson, 10 Neb. App. 848, 639 N.W.2d 432 (2002).

60-6,210.

Admission of evidence of blood test results in a criminal prosecution for manslaughter under section 28-305 is not authorized under this section. State v. Brouillette, 265 Neb. 214, 655 N.W.2d 876 (2003).

60-6,211.

The commutation of a motor vehicle operator's license suspension by the judiciary is an improper use of a power reserved for the executive branch, and since the thrust of this section is toward that end, it is unconstitutional. State v. Diaz, 266 Neb. 966, 670 N.W.2d 794 (2003).

60-6,230.

The use of hazard lights while driving is proscribed by the plain language of subsection (1) of this section. State v. Warriner, 267 Neb. 424, 675 N.W.2d 112 (2004).

61-206.

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

66-1848.

A metropolitan utilities district that intends to sell natural gas to distribution facilities it does not own falls under the certification provisions of this section and the Public Service Commission's jurisdiction. In re Application of Metropolitan Util. Dist., 270 Neb. 494, 704 N.W.2d 237 (2005).

68-133.

The Nebraska general assistance statutes obligate each county to provide to all income-eligible persons, whether or not they are residents of that county, the minimum level of care which the county has undertaken pursuant to subdivision (2) of this section. Salts v. Lancaster Cty., 269 Neb. 948, 697 N.W.2d 289 (2005).

68-903.

Nebraska has elected to participate in the federal Medicaid program through the enactment of this section. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-906.

This section requires the director of the Department of Health and Human Services Finance and Support to promulgate rules and policies implementing the Nebraska Medicaid program. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-1719.

''Participation in the program,'' within the meaning of section 68-1724, refers to participation in a self-sufficiency contract as described in this section, and the family cap established by section 68-1724 does not apply to families who are not participating in a self-sufficiency contract. Mason v. State, 267 Neb. 44, 627 N.W.2d 28 (2003).

68-1724.

''Participation in the program,'' within the meaning of this section, refers to participation in a self-sufficiency contract as described in section 68-1719, and the family cap established by this section does not apply to families who are not participating in a self-sufficiency contract. Mason v. State, 267 Neb. 44, 627 N.W.2d 28 (2003).

71-519.

A neutral law of general applicability need not be supported by a compelling governmental interest even though it may have an incidental effect of burdening religion. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

The assertion of a hybrid rights constitutional claim does not implicate a strict scrutiny review of a statute. A party may not force the government to meet the strict scrutiny standard by merely asserting claims of violations of more than one constitutional right. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section does not unlawfully burden a parent's right to freely exercise his or her religion, nor does it unlawfully burden parental rights. The Nebraska Supreme Court determines that using a rational basis test for review, this section is constitutional. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section is a neutral law of general applicability. It applies to all babies born in the state and does not discriminate as to which babies must be tested. Its purpose is not directed at religious practices or beliefs. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

71-902.

One of the declared public policy purposes of the Nebraska Mental Health Commitment Act is that all personal records required by the act shall be confidential except as otherwise specifically provided. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-908.

There is no definite time-oriented period to determine whether an act is recent for the purposes of this section. Each case must be decided on the basis of the surrounding facts and circumstances. In re Interest of Kochner, 266 Neb. 114, 662 N.W.2d 195 (2003).

To meet the definition of a mentally ill dangerous person, the State must show that the person suffers from a mental illness and that the person presents a substantial risk of harm to others or to himself or herself. In re Interest of Kochner, 266 Neb. 114, 662 N.W.2d 195 (2003).

An order adjudicating an individual as a mentally ill dangerous person pursuant to this section and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

71-930.

An order adjudicating an individual as a mentally ill dangerous person pursuant to section 71-908 and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

The subject of a mental health petition (or the county attorney) has the statutory right to appeal the mental health board's decision to the district court, which reviews the case de novo on the record. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-951.

Mental health board hearings are closed to the public except at the request of the subject. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-954.

Pursuant to this section, the subject of a petition under the Nebraska Mental Health Commitment Act has the right to confront and cross-examine adverse witnesses and evidence equivalent to the rights granted under the Confrontation Clauses of the U.S. and Nebraska Constitutions. In the absence of a waiver by the subject of a petition for commitment of his or her right to confrontation, in order to admit the telephonic testimony of a mental health professional during a civil commitment hearing, the State must demonstrate that (1) such testimony is necessary to further an important public policy and (2) the mental health professional is truly unavailable as a witness, thus necessitating telephonic testimony. The requirements of a demonstration of an important public policy and necessity are conjunctive, and the absence of a demonstration of either precludes the admission of the telephonic testimony. In re Interest of S.B., 263 Neb. 175, 639 N.W.2d 78 (2002).

71-959.

The determination of what constitutes ''prompt and adequate'' treatment, as those terms are used in subsection (2) of this section, will inherently be a factual determination to be made based on the evidence and circumstances presented in each particular case. Navarette v. Settle, 10 Neb. App. 479, 633 N.W.2d 588 (2001).

71-962.

The Nebraska Mental Health Commitment Act provides for a criminal penalty for any person who willfully breaches the confidentiality of records as required by section 83-1068, in addition to any civil liability which may be incurred by such acts. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-15,168.

A tort claim against a housing agency is subject to the Political Subdivisions Tort Claims Act regardless of whether it is covered by liability insurance. Harris v. Omaha Housing Auth., 269 Neb. 981, 698 N.W.2d 58 (2005).

75-136.

The primary effect of this section is that operative August 31, 2003, all appeals from the Public Service Commission, not just telecommunications cases, generally are to be brought under the Administrative Procedure Act; it does not evince a legislative intent to confer jurisdiction over telecommunications appeals that were not perfected under the statutory requirements in effect at the time the notice of appeal was filed. Cox Nebraska Telecom v. Qwest Corp., 268 Neb. 676, 687 N.W.2d 188 (2004).

75-369.03.

An ''interstate motor carrier'' within the meaning of this section is a carrier subject to federal jurisdiction pursuant to the federal motor carrier safety regulations, as delimited by 49 U.S.C. 13501 et seq., and an ''intrastate motor carrier'' is a carrier not subject to that federal jurisdiction. Caspers Constr. Co. v. Nebraska State Patrol, 270 Neb. 205, 700 N.W.2d 587 (2005).

76-276.

A mortgagee's status is that of a lienholder. Under this theory, the mortgagee is regarded as owning a security interest in real estate only and the mortgagor retains both the legal title and right of possession. 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005).

Although title and possession remain in the mortgagor, mortgagees may create a security interest in rents arising from real estate. 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005).

76-535.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-536.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the

Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-537.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-538.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-539.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-540.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-541.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-542.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-543.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-544.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-545.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-546.

ANNOTATIONS

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-547.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-548.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-549.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-550.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-551.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-552.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-553.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-554.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-555.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

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76-556.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-557.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-558.

''Preparing written reports of title to real property'' constitutes the ''business of abstracting'' for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-726.

Subsection (1) of this section gives the county court jurisdiction to award all reasonable costs, disbursements, expenses, and fees actually incurred by a party in resisting a condemnation proceeding after it is filed and before it is abandoned, whether or not such resistance occurs in the county court. City of Gordon v. Ruse, 268 Neb. 686, 687 N.W.2d 182 (2004).

Under subsection (1) of this section, a court-ordered award of costs, expenses, and attorney fees is appropriate only in connection with a proceeding initiated by an agency seeking to acquire real property by condemnation. Simon v. City of Omaha, 267 Neb. 718, 677 N.W.2d 129 (2004).

76-1005.

Although the Nebraska Trust Deeds Act does not provide a remedy for a defective trustee's sale, the trustor can sue in equity to set the sale aside. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

Defects in a trustee's sale conducted under a power of sale in a trust deed fall into one of three categories: (1) Those that render the sale void, (2) those that render the sale voidable, and (3) those that are inconsequential. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

When a defect renders a trustee's sale voidable, bare legal title passes to the sale purchaser. An injured party can have the sale set aside only so long as legal title has not moved to a bona fide purchaser. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

When a trustee's sale is void, no title passes, and adversely affected parties may have the sale set aside even though the property has passed into the hands of a bona fide purchaser. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

When the party seeking to set aside a trustee's sale establishes only an inconsequential defect, equity will not set aside the sale. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-1006.

The phrase ''the nature of such breach'' as used in subdivision (1) of this section requires the notice of default to describe the event that has triggered the use of the power of sale in the trust deed. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-1010.

The term ''forthwith'' as used in subsection (1) of this section requires the purchaser at a trustee's sale to pay the amount of its bid within a reasonable time under the circumstances of the case. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

This section allows for an affirmative defense whereby bona fide purchasers and encumbrancers for value and without notice can use the recitals in the trustee's deed to defeat any claim that the trustee's sale did not comply with the requirements of the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein. Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-2321.

ANNOTATIONS

The exception to the notice requirement in subsection (1) of this section applies only to certain ''road construction, widening, repair, or grading project'' undertaken by counties and townships, and does not apply to state road construction projects. Galaxy Telecom v. J.P. Theisen & Sons, 265 Neb. 270, 656 N.W.2d 444 (2003).

77-202.

A solid waste landfill operated pursuant to the Integrated Solid Waste Management Act serves a public purpose and may be exempt from property taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 311, 664 N.W.2d 456 (2003).

An industrial park which is created by a city council acting as a community redevelopment authority may serve the purpose of community development, and thus be exempt from taxation as property which serves a public purpose. City of York v. York Cty. Bd. of Equal., 266 Neb. 311, 664 N.W.2d 456 (2003).

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subdivision (1)(a) of this section. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Pursuant to subdivision (1)(a) of this section, real property acquired by the city through enforcement of special assessment liens and offered for sale to the public at a price which does not exceed delinquent special assessments and accrued interest, is used ''for a public purpose'' and is therefore exempt from real estate taxation. City of Alliance v. Box Butte Cty. Bd. of Equal., 265 Neb. 262, 656 N.W.2d 439 (2003).

77-1363.

Neb. Const. art. VIII requires uniform and proportionate assessment within the class of agricultural land; agricultural land is then divided into ''categories'' such as irrigated cropland, dry cropland, and grassland. Schmidt v. Thayer Cty. Bd. of Equal., 10 Neb. App. 10, 624 N.W.2d 63 (2001).

77-1504.01.

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to this section or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

77-2007.04.

Subdivision (3) of this section is not applicable if the transfer in question falls into only the second category of transfers set out in the opening paragraph of this section, i.e., transfers ''to a trustee or trustees exclusively for . . . religious, charitable, or educational purposes.'' In re Estate of Breslow, 266 Neb. 953, 670 N.W.2d 797 (2003).

77-2703.

This section imposes a sales tax upon the purchaser. Jacob v. State, 12 Neb. App. 696, 685 N.W.2d 88 (2004).

77-5015.

This section provides that opportunity shall be afforded all parties to present evidence and argument at a hearing before the Tax Equalization and Review Commission. Krusemark v. Thurston Cty. Bd. of Equal., 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5016.

A presumption exists that a board of equalization has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. This presumption remains until there is competent evidence to the contrary presented. Once the presumption has been rebutted, the burden shifts to the party requesting the exemption to prove its entitlement thereto. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

77-5019.

The plain language in subdivision (2)(a) of this section referring to ''the action complained of'' refers to the particular Tax Equalization and Review Commission order being appealed and does not refer to a previous order of the commission which might be relevant to issues in the current appeal. Marshall v. Dawes Cty. Bd. of Equal., 265 Neb. 33, 654 N.W.2d 184 (2002).

Pursuant to subsection (2) of this section, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or section 77-5023, the commission is not a proper party to a

proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (2) of this section, failure to accomplish service of process upon the county board of equalization within 30 days after filing the petition for judicial review is necessary to confer subject matter jurisdiction upon the reviewing court. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (2) of this section, the county board of equalization is a necessary party to a proceeding for judicial review of an order of the Nebraska Tax Equalization and Review Commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (5) of this section, when reviewing a judgment of the Tax Equalization and Review Commission 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. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (5) of this section, appellate review of a Tax Equalization and Review Commission decision shall be conducted for error on the record; the appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Krusemark v. Thurston Cty. Bd. of Equal., 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5023.

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or this section, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (1) of this section, the Tax Equalization and Review Commission lacked the authority to create a new market area in a county for the purpose of increasing the overall valuation of the agricultural range in that county so that it fell within the acceptable statutory range. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (2) of this section, the decision of the Tax Equalization and Review Commission to increase the value of all unimproved agricultural property in a county by 5 percent was proper, since the increase resulted in a median level valuation countywide of 77 percent, which is the midpoint of the acceptable range required by statute. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 2-201.

An agreement for the purchase of a truck for more than $500 that is not signed by the party against whom enforcement is sought is unenforceable unless one of the limited exceptions set forth in this section is present. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

The fact that there was no evidence of any oral or written agreement to purchase a truck that had a purchase price of more than $500 is sufficient to establish the absence of a purchase agreement that conforms to this section. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-313.

Pursuant to this section, in order to create an express warranty, the seller must make an affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain. Freeman v. Hoffman-La Roche, Inc., 260 Neb. 552, 618 N.W.2d 827 (2000).

UCC 2-606.

Evidence that someone tried to return a truck that was in their possession for the purpose of a test drive is sufficient to show that the truck was not accepted within the meaning of this section. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-607.

Pursuant to subdivision (3)(a) of this section, whether the notice given is satisfactory and whether it is given within a reasonable time are generally questions of fact to be measured by all the circumstances of the case. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

Pursuant to subsection (4) of this section, the burden is on the buyer to show a breach with respect to the goods accepted. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

The notice requirement set forth in subdivision (3)(a) of this section serves three purposes. It provides the seller with an opportunity to correct any defect, to prepare for negotiation and litigation, and to protect itself against stale claims asserted after it is too late for the seller to investigate them. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

UCC 2-725.

Pursuant to subsection (2) of this section, in order to constitute a future performance warranty, the terms of the warranty must unambiguously indicate that the manufacturer is warranting the future performance of the good for a specified period of time. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the determination of a discovery date is essentially an inquiry into all of the facts and circumstances facing the buyer; thus, a court should examine all relevant evidence that bears on the buyer's discovery. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the mere existence of ''repair or replace'' language in a warranty will not disturb a finding that the warranty extends to future performance. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, when a warranty extends to future performance, the statute of limitations is tolled and the cause of action does not begin to accrue until the breach of that warranty is or should have been discovered. The discovery analysis should focus on the buyer's knowledge of the nature and extent of the problem(s) with the goods. It is only when a buyer discovers, or should have discovered, facts sufficient to doubt the overall quality of the goods that subsection (2) is satisfied and the statute of limitations begins to run. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Subsection (1) of this section prohibits the parties, at least by original agreement, from extending the statute of limitations. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The future performance exception contained in subsection (2) of this section applies only to an express warranty and not to an implied warranty. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The limitations period was designed to be relatively short to serve as a point of finality for businesses after which they could destroy records without the fear of subsequent suits. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The statute of limitations accrues upon tender, unless the warranty extends to future performance. There is no exception for new warranties extended postsale, and the creation of such an exception is not a matter for this court. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

UCC 3-309.

Under this section and section 30-2456, a successor personal representative may enforce a lost note made payable to his or her decedent if the successor proves by clear and convincing evidence that (1) the predecessor personal representative was in possession of the notes and entitled to enforce them when the loss of possession occurred; (2) the loss of possession was not the result of a voluntary transfer by predecessor or lawful seizure; and (3) possession of the notes cannot be obtained because they were either destroyed, their whereabouts cannot be determined, or they are in the wrongful possession of an unknown person or a person who cannot be found or is not amenable to service of process. Where an estate has insufficient funds to provide for an indemnification bond, a court's withholding of judgment from the personal representative until the statute of limitations for enforcing negotiable instruments expires is a reasonable exercise of discretion in providing adequate protection for the defendant under subsection (b) of this section. Fales v. Norine, 263 Neb. 932, 644 N.W.2d 513 (2002).

CHAPTER 2
AGRICULTURE

Article.
1. Nebraska State Fair Board. 2-101 to 2-113.
2. State and County Fairs.
(f) County Agricultural Society Act. 2-258.
9. Noxious Weed Control. 2-958.01.
10. Plant Diseases, Insect Pests, and Animal Pests.
(k) Plant Protection and Plant Pest Act. 2-1072 to 2-10,116.
32. Natural Resources. 2-3225 to 2-3226.09.
51. Buffer Strip Act. 2-5109.
54. Agricultural Opportunities and Value-Added Partnerships Act. 2-5420.

ARTICLE 1
NEBRASKA STATE FAIR BOARD

Section
2-101. Nebraska State Fair Board; purpose; meetings; state fair; location; plan to relocate.
2-101.01. Legislative findings.
2-103. Membership; term.
2-104. Repealed. Laws 2008, LB 1116, § 14.
2-104.01. Repealed. Laws 2008, LB 1116, § 14.
2-106. Repealed. Laws 2008, LB 1116, § 14.
2-108. Nebraska State Fair Support and Improvement Cash Fund; created; use; investment.
2-112. Nebraska State Fair Relocation Cash Fund; created; use; investment.
2-113. Transfer of Nebraska State Fairgrounds; conditions; Nebraska State Fair relocated to city of Grand Island; Nebraska State Fair Board; duties.

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

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

(2) The Nebraska State Fair Board may provide in its constitution and bylaws for the qualification and participation of delegates at the annual meeting from such associations incorporated under the laws of the state for purposes of promoting and furthering the interests of participants in agricultural, horticultural, industrial, mechanical, or other pursuits or for the encouragement and perpetuation of the arts, skilled crafts, and sciences, and from such associations as provide for the training, encouragement, and competition of the youth of Nebraska in such endeavors. The annual meeting shall be held in every odd-numbered year at the capital of the state and in every even-numbered year at such location as the board determines. The chairperson of the board shall also

have the power to call meetings of the board whenever he or she may deem it expedient. All meetings of the board shall be conducted in accordance with the Open Meetings Act.

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

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

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

Source: Laws 1879, § 1, p. 396; Laws 1883, c. 1, § 1, p. 57; Laws 1899, c. 1, § 1, p. 51; R.S.1913, § 1; C.S.1922, § 1; C.S.1929, § 2-101; Laws 1937, c. 1, § 1, p. 51; C.S.Supp.,1941, § 2-101; Laws 1943, c. 2, § 1, p. 55; R.S.1943, § 2-101; Laws 1981, LB 544, § 1; Laws 1983, LB 30, § 1; Laws 2002, LB 1236, § 2; Laws 2004, LB 821, § 1; Laws 2008, LB1116, § 1.
Operative date July 18, 2008.

Cross References

Open Meetings Act, see section 84-1407.

2-101.01 Legislative findings.

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

achieve this goal, the Legislature finds that the Nebraska State Fair Board should endeavor to:

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

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

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

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

Source: Laws 2002, LB 1236, § 1; Laws 2008, LB1116, § 2.
Operative date July 18, 2008.

2-103 Membership; term.

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

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

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

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

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

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

(5) The State 4-H Program Administrator of the Cooperative Extension Service of the University of Nebraska, or his or her designee, and the Executive

Director of the Nebraska FFA, or his or her designee, shall be ex officio, nonvoting members of the Nebraska State Fair Board.

Source: Laws 2002, LB 1236, § 3; Laws 2008, LB1116, § 3.
Operative date January 1, 2009.

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

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

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

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

The Nebraska State Fair Support and Improvement Cash Fund is created. The fund shall be maintained in the state accounting system as a cash fund. The State Treasurer shall credit to the fund the disbursement of state lottery proceeds designated for the Nebraska State Fair and matching funds from the most populous city within the county in which the state fair is located. The balance of any fund that is administratively created to receive lottery proceeds designated for the Nebraska State Fair and matching fund revenue prior to May 25, 2005, shall be transferred to the Nebraska State Fair Support and Improvement Cash Fund on such date. The Nebraska State Fair Support and Improvement Cash Fund shall be expended by the Nebraska State Fair Board to provide support for operating expenses and capital facility enhancements, including new construction and other capital improvements and other enhancements to and upon any exhibition facility utilized as the location of the Nebraska State Fair. Expenditures from the fund shall not be limited to the amount appropriated. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 426, § 4; Laws 2007, LB435, § 1; Laws 2008, LB1116, § 4.
Operative date July 18, 2008.

Cross References

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

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

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

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB1116, § 5.
Operative date July 18, 2008.

Cross References

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 2008, LB1116, § 6.
Operative date July 18, 2008.

ARTICLE 2

STATE AND COUNTY FAIRS

(f) COUNTY AGRICULTURAL SOCIETY ACT

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-258 Use of tax money.

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

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-202; Laws 1977, LB 484, § 1; R.S.1943, (1991), § 2-202; Laws 1997, LB 469, § 9; Laws 2008, LB1116, § 7.
Operative date July 18, 2008.

ARTICLE 9

NOXIOUS WEED CONTROL

2-958.01 Noxious Weed and Invasive Plant Species Assistance Fund; created; use; investment.

The Noxious Weed and Invasive Plant Species Assistance Fund is created. The fund may be used to carry out the purposes of section 2-958.02. The State Treasurer shall credit to the fund any funds transferred pursuant to section 54-857, funds appropriated to the fund by the Legislature, and funds received as gifts or grants or other private or public funds obtained for the purposes set

forth in section 2-958.02. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 869, § 4; Laws 2008, LB961, § 1.
Operative date April 3, 2008.

Cross References

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

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

(k) PLANT PROTECTION AND PLANT PEST ACT

Section
2-1072. Act, how cited.
2-1074. Definitions, where found.
2-1075.02. Certified seed potatoes, defined.
2-10,116. Rules and regulations.

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

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

Source: Laws 1988, LB 874, § 1; Laws 1993, LB 406, § 1; Laws 2008, LB791, § 1.
Effective date July 18, 2008.

2-1074 Definitions, where found.

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

Source: Laws 1988, LB 874, § 3; Laws 1993, LB 406, § 2; Laws 2008, LB791, § 2.
Effective date July 18, 2008.

2-1075.02 Certified seed potatoes, defined.

Certified seed potatoes means seed potatoes which have been certified by a certification entity recognized by the department to certify that the seed potatoes are free of regulated plant pests.

Source: Laws 2008, LB791, § 3.
Effective date July 18, 2008.

2-10,116 Rules and regulations.

The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;

(10) Factors to be considered when the director issues an order imposing an administrative fine; and

(11) The planting of certified seed potatoes in the state.

Source: Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31; Laws 2008, LB791, § 4.
Effective date July 18, 2008.

ARTICLE 32

NATURAL RESOURCES

Section
2-3225. Districts; tax; levies; limitation; use; collection.
2-3226.01. River-flow enhancement bonds; authorized; natural resources districts; powers and duties; acquisition of water rights by purchase or lease; agreements; contents.
2-3226.05. River-flow enhancement bonds; repayment of financial assistance; occupation tax authorized; collection; accounting; lien; foreclosure.
2-3226.06. Payment to water rights holders; authorized.
2-3226.07. Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.
2-3226.08. Financial assistance; district; repayment; duties.
2-3226.09. Department; State Treasurer; duties.

2-3225 Districts; tax; levies; limitation; use; collection.

(1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04,

not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition to the power and authority granted in subdivisions (1)(a) and (b) of this section, each district located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2011-12.

(d) In addition to the power and authority granted in subdivisions (a) through (c) of this subsection, a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may annually levy a tax not to exceed ten cents per one hundred dollars of taxable valuation of all taxable property in the district. The proceeds of such tax may be used for the payment of principal and interest on bonds and refunding bonds issued pursuant to section 2-3226.01 or for the repayment of financial assistance received by the district pursuant to section 2-3226.07. Such levy is not includable in the computation of other limitations upon the district's tax levy.

(2) The proceeds of the tax levies authorized in subdivisions (1)(a) through (c) of this section shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the tax levies authorized in subdivisions (1)(a) through (d) of this section shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Source: Laws 1969, c. 9, § 25, p. 115; Laws 1972, LB 540, § 1; Laws 1975, LB 577, § 19; Laws 1979, LB 187, § 10; Laws 1981, LB 110, § 1; Laws 1987, LB 148, § 4; Laws 1992, LB 719A, § 10; Laws 1993, LB 734, § 14; Laws 1996, LB 1114, § 17; Laws 2004, LB 962, § 3; Laws 2006, LB 1226, § 4; Laws 2007, LB701, § 11; Laws 2008, LB1094, § 1.
Effective date April 2, 2008.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.01 River-flow enhancement bonds; authorized; natural resources districts; powers and duties; acquisition of water rights by purchase or lease; agreements; contents.

(1) In order to implement its duties and obligations under the Nebraska Ground Water Management and Protection Act and in addition to other powers

authorized by law, the board of a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may issue negotiable bonds and refunding bonds of the district and entitled river-flow enhancement bonds, with terms determined appropriate by the board, payable by (a) funds granted to such district by the state or federal government for one or more qualified projects, (b) the occupation tax authorized by section 2-3226.05, or (c) the levy authorized by section 2-3225. The district may issue the bonds or refunding bonds directly, or such bonds may be issued by any joint entity as defined in section 13-803 whose member public agencies consist only of qualified natural resources districts or by any joint public agency as defined in section 13-2503 whose participating public agencies consist only of qualified natural resources districts, in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts. For the payment of such bonds or refunding bonds, the district may pledge one or more permitted payment sources.

(2) Within forty-five days after receipt of a written request by the Natural Resources Committee of the Legislature, the qualified natural resources districts shall submit a written report to the committee containing an explanation of existing or planned activities for river-flow enhancement, the revenue source for implementing such activities, and a description of the estimated benefit or benefits to the district or districts.

(3) Beginning on April 1, 2008, if a district uses the proceeds of a bond issued pursuant to this section for the purposes described in subdivision (1) of section 2-3226.04 or the state uses funds for those same purposes, the agreement to acquire water rights by purchase or lease pursuant to such subdivision shall identify (a) the method of payment, (b) the distribution of funds by the party or parties receiving payments, (c) the water use or rights subject to the agreement, and (d) the water use or rights allowed by the agreement. If any irrigation district is party to the agreement, the irrigation district shall allocate funds received under such agreement among its users or members in a reasonable manner, giving consideration to the benefits received and the value of the rights surrendered for the specified contract period.

Source: Laws 2007, LB701, § 6; Laws 2008, LB1094, § 2.
Effective date April 2, 2008.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.05 River-flow enhancement bonds; repayment of financial assistance; occupation tax authorized; collection; accounting; lien; foreclosure.

(1) The district may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, the proceeds of which may be used for the purpose of repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04 or for the repayment of financial assistance received by the district pursuant to section 2-3226.07.

(2) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless, on or before July 1, 2007, and on or before

March 1 in each subsequent year, the record owner certifies to the district the nonirrigation status of such acres.

(3) Any such occupation tax shall remain in effect so long as the district has bonds outstanding which have been issued stating such occupation tax as an available source for payment.

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time and in the same manner as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time and in the same manner as general real property taxes. The county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes provided for in section 77-1804. In addition, the list shall be provided to natural resources districts which levied the delinquent occupation taxes. The list shall include the record owner's name, the parcel identification number, and the amount of delinquent occupation tax. For services rendered in the collection of the occupation tax, the county treasurer shall receive the fee provided for collection of general natural resources district money under section 33-114.

(5) Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such occupation taxes have become delinquent and the real property on which the irrigation took place has not been offered at any tax sale, the district may proceed in district court in the county in which the real estate is situated to foreclose in its own name the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917 shall govern when applicable.

Source: Laws 2007, LB701, § 10; Laws 2008, LB1094, § 3.
Effective date April 2, 2008.

2-3226.06 Payment to water rights holders; authorized.

The Legislature finds that water rights holders who lease and forego water use to assist in the management, protection, and conservation of the water resources of river basins must be paid. It is the intent of the Legislature to provide payment to such water rights holders through the financial assistance provided in section 2-3226.07. The Legislature further finds that the financial assistance provided by the state under such section shall be repaid through the authority granted under Laws 2007, LB 701, or such other means as are provided by the Legislature.

Source: Laws 2008, LB1094, § 4.
Effective date April 2, 2008.

2-3226.07 Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.

(1) The Water Contingency Cash Fund is created. The department shall administer the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) No later than five days after April 2, 2008, a natural resources district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin, and such natural resources district, using authority granted under Laws 2007, LB 701, enters or has entered into agreements, shall submit a request in writing to the department certifying the amount of financial assistance necessary to meet its obligations under section 2-3226.04 by or through obligations of joint entities or joint public agencies formed for the purposes described in section 2-3226.01. Within fifteen days after April 2, 2008, if such a request has been received by the department, the department shall expend from the Water Contingency Cash Fund the amount requested to provide financial assistance to the submitting natural resources district. The natural resources district shall use the financial assistance provided by the state from the Water Contingency Cash Fund to compensate water rights holders who agree or have agreed to lease and forgo the use of water. Any financial assistance provided under this section not used for such purpose by the natural resources district within sixty days after it is received by such district shall be returned to the department for credit to the Water Contingency Cash Fund.

Source: Laws 2008, LB1094, § 5.
Effective date April 2, 2008.

Cross References

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

2-3226.08 Financial assistance; district; repayment; duties.

(1) Any district receiving financial assistance pursuant to section 2-3226.07 shall remit to the department the proceeds of the property tax authorized pursuant to subdivision (1)(d) of section 2-3225, the proceeds of the occupation tax authorized pursuant to section 2-3226.05, or both, when such proceeds are available for distribution until the amount of such financial assistance has been repaid. Such proceeds shall be remitted within fifteen days after receipt of the proceeds by the district.

(2) If the district does not receive proceeds described in subsection (1) of this section, the district shall reimburse the Water Contingency Cash Fund by such means as are provided by the Legislature. Such reimbursement shall be made no later than June 30, 2013.

Source: Laws 2008, LB1094, § 6.
Effective date April 2, 2008.

2-3226.09 Department; State Treasurer; duties.

The department shall remit reimbursements received pursuant to section 2-3226.08 to the State Treasurer for credit to the Water Contingency Cash Fund. The department shall calculate the amount of such reimbursements so remitted. After the initial disbursement of financial assistance by the department as authorized in section 2-3226.07, the State Treasurer shall, at the end of each calendar month, transfer the balance of the Water Contingency Cash Fund to the Cash Reserve Fund.

Source: Laws 2008, LB1094, § 7.
Effective date April 2, 2008.

ARTICLE 51
BUFFER STRIP ACT

Section
2-5109. Contractual agreement; terms; payments; renewal.

2-5109 Contractual agreement; terms; payments; renewal.

(1) Upon approval of an application by the district and the department, the district shall enter into a contractual agreement with the applicant for the land included in the buffer strip. The agreement shall include a provision that the applicant shall maintain the buffer strip in accordance with the approved plan during the term of the rental agreement. The agreement may also include a provision that the applicant shall not apply specified fertilizers on buffered fields between designated dates. Failure to maintain the buffer strip in accordance with the plan shall be cause for all future payments under the agreement to be forfeited and shall be cause for the recovery by the department of any payments previously made. Upon submission of a copy of the agreement to the department, it shall authorize the State Treasurer to transfer funds to the district from the Buffer Strip Incentive Fund in an amount equal to the total amount of funds due for the agreement in that district that year. Such transfer shall be made as soon as funds are available.

(2) If the applicant does not receive reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed two hundred fifty dollars per acre or fraction thereof included in the buffer strip.

(3) If the applicant receives reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed two hundred fifty dollars per acre included in the buffer strip, minus the amount of the other reimbursement.

(4) The actual amount of any payment made to an applicant under subsection (2) or (3) of this section shall be determined by the district using the sliding scale provided in rules and regulations adopted and promulgated pursuant to section 2-5111. Such amount shall be included as part of the application submitted to the department.

(5) Contractual agreements pursuant to this section shall be for a minimum term of five years and a maximum term of ten years.

(6) Following the expiration of any contractual agreement pursuant to this section, the applicant may apply to renew the agreement. Any application for renewal of an agreement shall be made in accordance with sections 2-5107 to 2-5109 and shall be considered with any new applications.

Source: Laws 1998, LB 1126, § 9; Laws 2008, LB790, § 1.
Effective date July 18, 2008.

ARTICLE 54
AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section
2-5420. Application process; priority; restriction on use of grant funds.

2-5420 Application process; priority; restriction on use of grant funds.

(1) To be eligible for a grant under the Agricultural Opportunities and Value-Added Partnerships Act, an applicant shall:

(a) Document a matching amount in money or in-kind contributions or a combination of both equal to twenty-five percent of the grant funds requested, except that if the grant funds will be used to acquire or lease a building or equipment to be used in a farming or ranching operation or in a private enterprise, an applicant shall provide a matching amount in money and in-kind contribution of no less than fifty percent of the grant funds requested of which the matching amount in money shall be no less than twenty-five percent of the grant funds requested;

(b) Specify measurable goals and expected outcomes for the project for which the grant funds are requested; and

(c) Specify an evaluation and impact assessment process or procedure for the project for which the grant funds are requested.

(2) Priority for the awarding of grants may be given to applicants that provide a matching amount in money.

(3) Whenever grant funds are used to acquire or lease a building or equipment to be used in a farming or ranching operation or in a private enterprise, any removal from the state or resale of the building or equipment within three years after the date of award of the grant funds without the prior approval of the Department of Economic Development shall be deemed a utilization or diversion of grant funds to a purpose or expenditure not specified or contemplated in the application or terms of the award of the grant for purposes of section 2-5421.

Source: Laws 2005, LB 90, § 11; Laws 2008, LB789, § 1.
Effective date April 17, 2008.
Termination date January 1, 2011.

CHAPTER 7
ATTORNEYS AT LAW

Article.
2. Legal Education for Public Service Loan Repayment Act. 7-201 to 7-209.

ARTICLE 2
LEGAL EDUCATION FOR PUBLIC SERVICE LOAN REPAYMENT ACT

Section
7-201. Act, how cited.
7-202. Legislative findings.
7-203. Terms, defined.
7-204. Legal Education for Public Service Loan Repayment Board; created; members.
7-205. Board; chairperson; meetings; expenses.
7-206. Legal education for public service loan repayment program; rules and regulations; contents.
7-207. Commission on Public Advocacy; applications; board; recommendations; certification of recipients.
7-208. Commission on Public Advocacy; solicit and receive donations.
7-209. Legal Education for Public Service Loan Repayment Fund; created; investment.

7-201 Act, how cited.

Sections 7-201 to 7-209 shall be known and may be cited as the Legal Education for Public Service Loan Repayment Act.

Source: Laws 2008, LB1014, § 19.
Operative date July 18, 2008.

7-202 Legislative findings.

The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work. A need exists for public legal service entities to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service. Programs providing educational loan forgiveness will encourage law students and other attorneys to seek employment in the area of public legal service and will enable public legal service entities to attract and retain qualified attorneys.

Source: Laws 2008, LB1014, § 20.
Operative date July 18, 2008.

7-203 Terms, defined.

For purposes of the Legal Education for Public Service Loan Repayment Act:

(1) Board means the Legal Education for Public Service Loan Repayment Board;

(2) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(3) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Source: Laws 2008, LB1014, § 21.
Operative date July 18, 2008.

7-204 Legal Education for Public Service Loan Repayment Board; created; members.

The Legal Education for Public Service Loan Repayment Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, a member of the Nebraska State Bar Association selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Source: Laws 2008, LB1014, § 22.
Operative date July 18, 2008.

7-205 Board; chairperson; meetings; expenses.

The board shall select one of its members to be chairperson. The board shall meet as necessary to carry out its duties, but shall meet at least annually. The members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2008, LB1014, § 23.
Operative date July 18, 2008.

7-206 Legal education for public service loan repayment program; rules and regulations; contents.

The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public service loan repayment program. The rules and regulations shall include:

(1) Recipients shall be full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including attorneys to work in rural areas and attorneys with skills in languages other than English. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) A general program structure of loan forgiveness shall be established that qualifies for the tax benefits provided in section 108(f) of the Internal Revenue Code, as defined in section 49-801.01; and

(6) Other criteria for loan eligibility, application, payment, and forgiveness necessary to carry out the purposes of the Legal Education for Public Service Loan Repayment Act.

Source: Laws 2008, LB1014, § 24.
Operative date July 18, 2008.

7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan forgiveness on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service Loan Repayment Fund.

Source: Laws 2008, LB1014, § 25.
Operative date July 18, 2008.

7-208 Commission on Public Advocacy; solicit and receive donations.

The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service Loan Repayment Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund.

Source: Laws 2008, LB1014, § 26.
Operative date July 18, 2008.

7-209 Legal Education for Public Service Loan Repayment Fund; created; investment.

The Legal Education for Public Service Loan Repayment Fund is created. The fund shall consist of funds donated to the legal education for public service loan repayment program pursuant to section 7-208 and application fees collected under the Legal Education for Public Service Loan Repayment Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB1014, § 27.
Operative date July 18, 2008.

Cross References

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

CHAPTER 8
BANKS AND BANKING

Article.
1. General Provisions. 8-115.01 to 8-1,140.
2. Trust Companies. 8-223 to 8-234.
3. Building and Loan Associations. 8-355, 8-374.
9. Bank Holding Companies. 8-910.
15. Acquisition or Merger of Financial Institutions.
(c) Cross-Industry Acquisition or Merger of Financial Institution. 8-1510.
21. Interstate Branching by Merger Act of 1997. 8-2102, 8-2106.

ARTICLE 1
GENERAL PROVISIONS

Section
8-115.01. Banks; new charter; transfer of charter; procedure.
8-116. Banks; capital stock; amount required.
8-120. Corporation; application to conduct, merge, or transfer bank; contents.
8-122. Issuance of charter to transact business.
8-143.01. Extension of credit; limits; written report; credit report; violation; penalty; powers of director.
8-157. Branch banking; Director of Banking and Finance; powers.
8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-115.01 Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors is such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. When the persons making application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing

as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail;

(8) The expense of any publication and mailing required by this section shall be paid by the applicant; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Laws 1965, c. 25, § 1, p. 191; Laws 1967, c. 19, § 2, p. 117; Laws 1973, LB 164, § 3; Laws 1974, LB 721, § 1; Laws 1979, LB 220, § 2; Laws 2002, LB 957, § 1; Laws 2003, LB 217, § 2; Laws 2005, LB 533, § 2; Laws 2008, LB851, § 1.
Operative date March 20, 2008.

8-116 Banks; capital stock; amount required.

(1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than seventy thousand dollars or seventy percent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities or counties of one hundred thousand or more inhabitants, not less than five hundred thousand dollars.

(2) Notwithstanding subsection (1) of this section, the department shall have the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank charter, which amounts shall not be less than the amounts provided in subsection (1) of this section.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws

1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2.
Operative date July 18, 2008.

8-120 Corporation; application to conduct, merge, or transfer bank; contents.

(1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank shall make under oath and transmit to the department a complete detailed application giving (a) the name of the proposed bank; (b) a certified copy of the articles of incorporation; (c) the names of the stockholders; (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; (e) the nature of the proposed banking business; (f) the proposed amounts of paid-up capital stock and surplus, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and (g) a statement that at least twenty percent of the amounts stated in subdivision (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located if such bank charter is not located in a city or village, or (c) as provided in subdivision (6) of section 8-115.01.

Source: Laws 1909, c. 10, § 15, p. 74; R.S.1913, § 294; Laws 1919, c. 190, tit. V, art. XVI, § 15, p. 691; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7996; C.S.1929, § 8-126; Laws 1933, c. 18, § 17, p. 143; C.S.Supp.,1941, § 8-126; R.S.1943, § 8-128; Laws 1959, c. 15, § 9, p. 135; R.R.S.1943, § 8-128; Laws 1963, c. 29, § 20, p. 142; Laws 1967, c. 19, § 7, p. 120; Laws 1980, LB 916, § 1; Laws 2002, LB 957, § 2; Laws 2005, LB 533, § 4; Laws 2008, LB851, § 3.
Operative date July 18, 2008.

8-122 Issuance of charter to transact business.

(1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock and surplus have been paid in, as determined by the department in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the

merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Source: Laws 1909, c. 10, § 16, p. 74; Laws 1911, c. 8, § 1, p. 79; R.S.1913, § 295; Laws 1919, c. 190, tit. V, art. XVI, § 16, p. 692; Laws 1921, c. 302, § 2, p. 958; C.S.1922, § 7997; C.S.1929, § 8-127; R.S.1943, § 8-129; Laws 1947, c. 12, § 1, p. 77; Laws 1957, c. 10, § 1, p. 128; R.R.S.1943, § 8-129; Laws 1963, c. 29, § 22, p. 142; Laws 1967, c. 19, § 9, p. 120; Laws 1980, LB 916, § 2; Laws 1983, LB 252, § 3; Laws 1996, LB 1275, § 2; Laws 2002, LB 957, § 3; Laws 2002, LB 1094, § 4; Laws 2008, LB851, § 4.
Operative date July 18, 2008.

8-143.01 Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any

of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2).

(8) For purposes of this section:

(a) Executive officer shall mean a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer shall include the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus shall mean the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

(10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5.
Operative date March 20, 2008.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2104, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the

director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including

executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application to all financial institutions located within the county where the proposed branch or mobile branch would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws 1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws 1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137,

§ 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9; Laws 2008, LB851, § 6. Operative date March 20, 2008.

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 March 20, 2008, 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. Operative date March 20, 2008.

ARTICLE 2

TRUST COMPANIES

Section
8-223. Statements required; when; annual report, defined; penalty.
8-224. Reports; form; publication; trust company; disclosure statement.
8-234. Branch trust offices authorized; procedure.

8-223 Statements required; when; annual report, defined; penalty.

(1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

(3) The filing requirements of this section shall not apply to the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 11, p. 194; R.S.1913, § 749; Laws 1919, c. 190, tit. V, art. XVIII, § 17, p. 723; C.S.1922, § 8079; C.S.1929, § 8-218; Laws 1933, c. 18, § 82, p. 178; C.S.Supp.,1941, § 8-218;

R.S.1943, § 8-223; Laws 1993, LB 81, § 38; Laws 1998, LB 1321, § 48; Laws 2000, LB 932, § 6; Laws 2008, LB851, § 8.
Operative date July 18, 2008.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-224 Reports; form; publication; trust company; disclosure statement.

(1) The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered.

(2) The publication required by this section shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request in accordance with the following provisions:

(a) The annual disclosure statement shall be in a form prescribed by the department;

(b) In the lobby of its main office, in every branch trust office, and in every representative trust office, the trust company shall at all times display a notice that the annual disclosure statement may be obtained from the trust company;

(c) If the trust company maintains an Internet web site, the home page of the web site shall at all times contain a notice that the annual disclosure statement may be obtained from the trust company;

(d) The notice described in subdivisions (b) and (c) of this subsection shall include, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made;

(e) The first requested copy of the annual disclosure statement shall be provided to a requester free of charge; and

(f) A trust company shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure statement to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. A trust company shall make its annual disclosure statement available continuously until (i) the annual disclosure statement for the succeeding year becomes available or (ii) a summary of its annual report is published for the succeeding year in accordance with this section.

(3) The publication required by this section shall not apply to reports of the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 12, p. 194; R.S.1913, § 750; Laws 1919, c. 190, tit. V, art. XVIII, § 18, p. 723; C.S.1922, § 8080; C.S.1929, § 8-219; Laws 1933, c. 18, § 83, p. 178; C.S.Supp.,1941, § 8-219; R.S.1943, § 8-224; Laws 1993, LB 81, § 39; Laws 1997, LB 137, § 9; Laws 2008, LB851, § 9.
Operative date July 18, 2008.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-234 Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located and (b) give notice of such application for a branch trust office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and mailing required by this section shall be paid by the applicant. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Source: Laws 1998, LB 1321, § 52; Laws 2002, LB 1089, § 5; Laws 2003, LB 217, § 10; Laws 2005, LB 533, § 14; Laws 2008, LB851, § 10. Operative date March 20, 2008.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section
8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.
8-374. Department; hearing on application; notice; purpose.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2008, 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.
Operative date March 20, 2008.

8-374 Department; hearing on application; notice; purpose.

Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association. A public hearing shall be held on each application. The date for hearing the application shall be not more

than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(1) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan for the management of the association's business;

(2) Whether the persons organizing such association are of good character and responsibility;

(3) Whether in the department's judgment a need exists for such an institution in the community to be served;

(4) Whether there is a reasonable probability of its usefulness and success; and

(5) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

The expense of any publication required by this section shall be paid by the applicant.

Source: Laws 1981, LB 500, § 19; Laws 2008, LB851, § 12.
Operative date March 20, 2008.

ARTICLE 9
BANK HOLDING COMPANIES

Section
8-910. Unlawful acts; authorized ownership or control of banks; limitation.

8-910 Unlawful acts; authorized ownership or control of banks; limitation.

(1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

(a)(i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or (ii) the bank holding company registers with the department in accordance with the provisions of section 8-913 as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would

have deposits in Nebraska in an amount no greater than twenty-two percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent midyear reports, except as provided in subsections (4), (5), and (6) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under the Nebraska Banking Act; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 8-911.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks in Nebraska owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank.

(4) A bank or bank holding company which acquires and holds all or substantially all of the voting stock of one credit card bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

(6) A bank which accepts deposits from nonresidents of Nebraska and voluntarily segregates the reporting of such deposits in such a manner as to allow the director to determine the amounts of such deposits shall not have such deposits count against the limitations set forth in subdivision (2)(c) of this section. The bank shall report the amount of such deposits, if so segregated, to the director prior to October 1 of each year.

Source: Laws 1995, LB 384, § 21; Laws 1998, LB 1321, § 70; Laws 2000, LB 932, § 18; Laws 2002, LB 1089, § 8; Laws 2004, LB 999, § 6; Laws 2008, LB851, § 13.
Operative date March 20, 2008.

Cross References

Nebraska Banking Act, see section 8-101.01.

ARTICLE 15
ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

Section
8-1510. Cross-industry acquisition or merger; application; notice; hearing.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510 Cross-industry acquisition or merger; application; notice; hearing.

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14.
Operative date March 20, 2008.

ARTICLE 21
INTERSTATE BRANCHING BY MERGER ACT OF 1997

Section
8-2102. Terms, defined.
8-2106. Interstate merger transaction; when prohibited.

8-2102 Terms, defined.

For purposes of the Interstate Branching By Merger Act of 1997, unless the context otherwise requires:

(1) Bank means a bank as defined in 12 U.S.C. 1813, as such section existed on March 20, 2008;

(2) Department means the Department of Banking and Finance;

(3) Director means the Director of Banking and Finance;

(4) Home state means (a) with respect to a state chartered bank, the state in which the bank is chartered and (b) with respect to a national bank, the state in which the main office of the bank is located;

(5) Home state regulator means, with respect to an out-of-state state chartered bank, the bank supervisory agency of the state in which such bank is chartered;

(6) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

(7) Interstate merger transaction means a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank;

(8) Nebraska bank means a bank whose home state is Nebraska;

(9) Nebraska state chartered bank means a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act;

(10) Out-of-state bank means a bank whose home state is a state other than Nebraska;

(11) Out-of-state state chartered bank means a bank chartered under the laws of any state other than Nebraska;

(12) Resulting bank means a bank that has resulted from an interstate merger transaction under the Interstate Branching By Merger Act of 1997; and

(13) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Source: Laws 1997, LB 351, § 2; Laws 1998, LB 1321, § 74; Laws 2008, LB851, § 15.
Operative date March 20, 2008.

Cross References

Nebraska Banking Act, see section 8-101.01.

8-2106 Interstate merger transaction; when prohibited.

An interstate merger transaction shall not be permitted if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of fourteen percent of the total deposits of all banks in Nebraska, plus the total deposits, savings accounts, passbook accounts, and share accounts in savings and loan associations and building and loan associations in Nebraska, as determined by the director on the basis of the most recent calendar-year-end reports, except as provided in subsection (4), (5), or (6) of section 8-910.

Source: Laws 1997, LB 351, § 6; Laws 2008, LB851, § 16.
Operative date March 20, 2008.

CHAPTER 12
CEMETERIES

Article.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-401, 12-402.
8. Maintenance and Improvement of Cemeteries. 12-805 to 12-810.
12. Unmarked Human Burial Sites. 12-1202, 12-1204.
14. Statewide Cemetery Registry. 12-1401.

ARTICLE 4
CEMETERIES IN CITIES OF LESS THAN 25,000 POPULATION AND VILLAGES

Section
12-401. Cemetery board; members; appointment; terms; vacancies.
12-402. Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.

12-401 Cemetery board; members; appointment; terms; vacancies.

The mayor of any city having fewer than twenty-five thousand inhabitants, by and with the consent of the council or a majority thereof, and the chairperson of the board of trustees of any village, by and with the consent of the village board or a majority thereof, may appoint a board of not fewer than three nor more than six members, to be known as the cemetery board, from among the citizens at large of such city or village, who shall serve without pay and shall have entire control and management of any cemetery belonging to such city or village. Neither the mayor nor any member of the council nor the chairperson nor any member of the village board of trustees may be a member of the cemetery board. At the time of establishing such cemetery board, approximately one-third of the members shall be appointed for a term of one year, one-third for a term of two years, and one-third for a term of three years, and thereafter members shall be appointed for terms of three years. Vacancies in the membership of the board other than through the expiration of a term shall be filled for the unexpired portion of the term.

Source: Laws 1917, c. 207, § 1, p. 496; C.S.1922, § 4492; C.S.1929, § 13-401; R.S.1943, § 12-401; Laws 2008, LB995, § 1.
Effective date July 18, 2008.

12-402 Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.

(1) The mayor and council or the board of trustees, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of such cemeteries and the inhabitants thereof, may each year levy a tax not exceeding five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. The tax shall be collected and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected for this purpose shall constitute and be known as the

cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery and the inhabitants thereof. Warrants upon this fund shall be drawn by the cemetery board and shall be paid by the city or village treasurer. The city council or the board of trustees may issue a warrant from the cemetery fund if a payment is due and the cemetery board is not scheduled to meet prior to such due date to authorize the warrant.

(2) If the mayor and council or the board of trustees sets aside the proceeds from the sale of lots as a perpetual fund, the principal of the fund that is attributable to such proceeds, or attributable to any money which has come to the fund by donation, bequest, or otherwise that does not prohibit such use, may be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of such principal is so used in any fiscal year and no more than thirty-five percent of such principal is so used in any period of ten consecutive fiscal years.

(3) This section does not limit the use of any money that comes to the city or village by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1917, c. 207, § 2, p. 496; C.S.1922, § 4493; C.S.1929, § 13-402; R.S.1943, § 12-402; Laws 1953, c. 17, § 1, p. 84; Laws 1979, LB 187, § 26; Laws 1992, LB 719A, § 24; Laws 2005, LB 262, § 1; Laws 2008, LB995, § 2.
Effective date July 18, 2008.

ARTICLE 8

MAINTENANCE AND IMPROVEMENT OF CEMETERIES

Section
12-805. Abandoned or neglected cemeteries; care and maintenance.
12-806. Abandoned or neglected cemeteries; care; item in county budget.
12-806.01. Repealed. Laws 2008, LB 995, § 12.
12-807. Abandoned or neglected pioneer cemeteries; preservation.
12-808. Abandoned or neglected pioneer cemetery, defined.
12-810. Abandoned or neglected pioneer cemeteries; mowing; historical and directional markers.

12-805 Abandoned or neglected cemeteries; care and maintenance.

The county board shall expend money from the general fund of the county for the care and maintenance of each abandoned or neglected cemetery. Such amount shall not exceed one thousand dollars per cemetery in a calendar year. Such care and maintenance may include the repair or building of fences and annual spraying for the control of weeds and brush.

Source: Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 146; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(9), p. 226; R.S. 1943, § 23-113; Laws 1949, c. 35, § 1, p. 128; Laws 1973, LB 277, § 1; Laws 1974, LB 608, § 1; C.S.Supp.,1974, § 23-113; Laws 2001, LB 280, § 1; Laws 2008, LB995, § 3.
Effective date July 18, 2008.

12-806 Abandoned or neglected cemeteries; care; item in county budget.

The county board may include in the budget for the next fiscal year an item for care of abandoned or neglected cemeteries as provided in section 12-805.

Source: Laws 1949, c. 35, § 2, p. 128; R.S.1943, (1974), § 23-113.01; Laws 2008, LB995, § 4.
Effective date July 18, 2008.

12-806.01 Repealed. Laws 2008, LB 995, § 12.

12-807 Abandoned or neglected pioneer cemeteries; preservation.

The county board shall expend money from the general fund of the county for the continuous preservation and maintenance, including mowing, of an abandoned or neglected pioneer cemetery when petitioned to do so by thirty-five adult residents of the county. The county board shall publish notice of such petition in one issue of the official newspaper published and of general circulation in the county at least ten days prior to the day when the matter will be heard by the county board.

Source: Laws 1975, LB 129, § 1; Laws 2008, LB995, § 5.
Effective date July 18, 2008.

12-808 Abandoned or neglected pioneer cemetery, defined.

For purposes of sections 12-807 to 12-810, an abandoned or neglected pioneer cemetery shall be defined according to the following criteria:

(1) Such cemetery was founded or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;

(2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and

(3) Such cemetery has been generally abandoned or neglected for a period of at least five consecutive years.

Source: Laws 1975, LB 129, § 2; Laws 1996, LB 932, § 1; Laws 2008, LB995, § 6.
Effective date July 18, 2008.

12-810 Abandoned or neglected pioneer cemeteries; mowing; historical and directional markers.

Any county affected by sections 12-807 to 12-810 shall provide for at least one mowing annually of such cemetery each year, and one of such mowings shall occur within a period of two weeks prior to Memorial Day. Additional mowings shall be at the discretion of the county board, and each additional mowing may be subject to a public hearing at which the need for the additional mowing shall be presented to the county board. Within five years after maintenance and preservation of such cemetery is commenced by such county, a historical marker giving the date of the establishment of the cemetery and a short history of the cemetery may be placed at the site of such cemetery. One directional marker showing the way to such cemetery may be placed on the nearest state highway to such cemetery.

Source: Laws 1975, LB 129, § 4; Laws 1996, LB 932, § 4; Laws 2008, LB995, § 7.
Effective date July 18, 2008.

ARTICLE 12

UNMARKED HUMAN BURIAL SITES

Section
12-1202. Legislative findings and declarations.
12-1204. Terms, defined.

12-1202 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Although existing law prohibits removal, concealment, or abandonment of any dead human body and provides for the care and maintenance of abandoned or neglected cemeteries and pioneer cemeteries, additional statutory guidelines and protections are in the public interest;

(3) Existing law on cemeteries reflects the value placed on preserving human burial sites but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(4) An unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indians are scattered throughout the state;

(5) No adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves exists to protect the interests of relatives or other interested persons; and

(6) There are scientific, educational, religious, and cultural interests in the remains of our ancestors and those interests, whenever possible, should be served.

Source: Laws 1989, LB 340, § 2; Laws 2008, LB995, § 8.
Effective date July 18, 2008.

12-1204 Terms, defined.

For purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act:

(1) Burial goods shall mean any item or items reasonably believed to have been intentionally placed with the human skeletal remains of an individual at the time of burial and which can be traced with a reasonable degree of certainty to the specific human skeletal remains with which it or they were buried;

(2) Human burial site shall mean the specific place where any human skeletal remains are buried and the immediately surrounding area;

(3) Human skeletal remains shall mean the body or any part of the body of a deceased human in any stage of decomposition;

(4) Indian tribe shall mean any federally recognized or state-recognized Indian tribe, band, or community;

(5) Professional archaeologist shall mean a person having a postgraduate degree in archaeology, anthropology, history, or a related field with a specialization in archaeology and with demonstrated ability to design and execute an

archaeological study and to present the written results and interpretations of such a study in a thorough, scientific, and timely manner;

(6) Reasonably identified and reasonably identifiable shall mean identifiable, by a preponderance of the evidence, as to familial or tribal origin based on any available archaeological, historical, ethnological, or other direct or circumstantial evidence or expert opinion;

(7) Society shall mean the Nebraska State Historical Society; and

(8) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker, including burials located in abandoned or neglected cemeteries.

Source: Laws 1989, LB 340, § 4; Laws 2008, LB995, § 9.
Effective date July 18, 2008.

ARTICLE 14

STATEWIDE CEMETERY REGISTRY

Section
12-1401. Statewide Cemetery Registry; established and maintained.

12-1401 Statewide Cemetery Registry; established and maintained.

(1) The Nebraska State Historical Society shall establish and maintain the Statewide Cemetery Registry. The registry shall be located in the office of the Nebraska State Historical Society and shall be made available to the public. The purpose of the registry is to provide a central data bank of accurate and current information regarding the location of cemeteries, burial grounds, mausoleums, and columbaria in the state.

(2)(a) Each city, village, township, county, church, fraternal and benevolent society, cemetery district, cemetery association, mausoleum association, and any other person owning, operating, or maintaining a cemetery, pioneer cemetery, abandoned or neglected cemetery, mausoleum, or columbarium shall register with the Statewide Cemetery Registry.

(b) Except as provided in subdivision (c) of this subsection, the registration shall include the following:

(i) The location or address of the cemetery, mausoleum, or columbarium;

(ii) A plat of the cemetery, mausoleum, or columbarium grounds, including any lots, graves, niches, or crypts, if available;

(iii) The name and address of the person or persons representing the entity owning, operating, or maintaining the cemetery, mausoleum, or columbarium;

(iv) The inception date of the cemetery, mausoleum, or columbarium, if available; and

(v) If the cemetery, mausoleum, or columbarium is abandoned, the abandonment date, if available.

(c) The information required in subdivision (b) of this subsection regarding the operation and maintenance of a cemetery, mausoleum, or columbarium prior to January 1, 2006, shall be required only if such information is reasonably available to the registering entity.

(d) The entity owning, operating, or maintaining the cemetery, mausoleum, or columbarium may include information regarding the history of the operation of the cemetery, mausoleum, or columbarium.

(3) The entity owning, operating, or maintaining a registered cemetery, mausoleum, or columbarium shall update its entry in the registry every ten years following the initial registration by the entity.

Source: Laws 2005, LB 211, § 11; Laws 2008, LB995, § 10.
Effective date July 18, 2008.

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.
2. Community Development. 13-206.
5. Budgets.
   (a) Nebraska Budget Act. 13-508.
   (d) Budget Limitations. 13-519.
8. Interlocal Cooperation Act. 13-824.01.
12. Nebraska Public Transportation Act. 13-1210.
16. Self-Funding Benefits. 13-1622.
20. Integrated Solid Waste Management. 13-2001, 13-2020.01.
26. Convention Center Facility Financing Assistance Act. 13-2603, 13-2610.
29. Political Subdivisions Construction Alternatives Act. 13-2901 to 13-2914.

ARTICLE 2
COMMUNITY DEVELOPMENT

Section
13-206. Director; adopt rules and regulations; tax credits.

13-206 Director; adopt rules and regulations; tax credits.

(1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 13-205 taking into account the economic need level and the geographic distribution of the population of the community development area. The director shall also adopt and promulgate rules and regulations concerning the amount of the tax credit for which a program shall be certified. The tax credits shall be available for contributions to a certified program which may qualify as a charitable contribution deduction on the federal income tax return filed by the business firm or individual making such contribution. The decision of the department to approve or disapprove all or any portion of a proposal shall be in writing. If the proposal is approved, the maximum tax credit allowance for the certified program shall be stated along with the approval. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under sections 44-150 and 77-908 shall be transmitted to the Director of Insurance.

(2) For all business firms and individuals eligible for the credit allowed by section 13-207, except for insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908, the Tax Commissioner shall provide for the manner in which the credit allowed by section 13-207 shall be taken and the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regulations for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by section 13-207 to insurance companies paying premium and related retaliatory taxes in this state pursuant to sections 44-150 and 77-908 shall be taken and the forms on which

such credit shall be allowed. The Director of Insurance may adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908 a credit for the credit provided by section 13-207 and allowed by the Director of Insurance.

Source: Laws 1984, LB 372, § 6; Laws 1986, LB 1114, § 2; Laws 1987, LB 302, § 2; Laws 1990, LB 1241, § 2; Laws 2001, LB 300, § 3; Laws 2005, LB 334, § 3; Laws 2008, LB855, § 1.
Operative date July 18, 2008.

ARTICLE 5
BUDGETS

(a) NEBRASKA BUDGET ACT

(d) BUDGET LIMITATIONS

(a) NEBRASKA BUDGET ACT

13-508 Adopted budget statement; final adjusted valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section, shall file with and certify to the levying board or boards on or before September 20 of each year and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. Learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the final adjusted values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

(3)(a) A Class I school district shall do the filing and certification required by subsection (1) of this section on or before August 1 of each year.

(b) A learning community shall do such filing and certification on or before September 1 of each year.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1.
Effective date July 18, 2008.

(d) BUDGET LIMITATIONS

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, 2005, the last prior year's total of budgeted restricted funds shall be increased for a community college area by adding to such area's fiscal year base-year revenue the amount of revenue to be collected under subdivision (2)(c) of section 85-1517 that is in excess of the amount budgeted under this subdivision in the prior fiscal year.

(c) For all fiscal years beginning on or after July 1, 2008, educational service units may exceed the limitations of subdivision (1)(a) of this section to the extent that one hundred ten percent of the needs for the educational service unit calculated pursuant to section 79-1241.03 exceeds the budgeted restricted funds allowed pursuant to subdivision (1)(a) of this section.

(2) A governmental unit may exceed the limit provided in subdivisions (1)(a) and (b) 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 fifteen days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

ARTICLE 8
INTERLOCAL COOPERATION ACT

Section
13-824.01. Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

13-824.01 Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

(1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, operation, ownership, maintenance, or purchase of an electric generating facility and related facilities.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 relating to sealed bids shall not apply to contracts entered into by a joint entity in the exercise of its rights and powers relating to equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the governing body of the joint entity; and

(iii) The joint entity advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(b) Any contract for which the governing body has approved an engineer's certificate described in subdivision (a) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in facilities described in subsection (1) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The governing body of the joint entity determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the governing body of the joint entity. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county

where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the governing body. A written statement containing such certification shall be submitted to the joint entity by the engineer for the governing body's approval.

Source: Laws 2007, LB636, § 2; Laws 2008, LB939, § 1.
Effective date July 18, 2008.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section
13-1210. Assistance program; Department of Roads; certify funding; report.

13-1210 Assistance program; Department of Roads; certify funding; report.

(1) The Department of Roads shall annually certify the amount of operating costs eligible for funding under the public transportation assistance program established under section 13-1209.

(2) The department shall submit an annual report to the chairperson of the Appropriations Committee of the Legislature on or before December 1 of each year regarding funds requested by each applicant for eligible operating costs in the current fiscal year pursuant to subsection (2) of section 13-1209 and the total amount of state grants projected to be awarded in the current fiscal year pursuant to the public transportation assistance program. The report shall separate into two categories the requests and grants awarded for handicapped vans, otherwise known as paratransit vehicles, and requests and grants awarded for handicapped-accessible fixed-route bus systems.

Source: Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1; Laws 2008, LB1068, § 1.
Effective date July 18, 2008.

ARTICLE 16

SELF-FUNDING BENEFITS

Section
13-1622. Plan sponsor; obtain excess insurance; when.

13-1622 Plan sponsor; obtain excess insurance; when.

(1) Except as provided in subsection (4) of this section, the plan sponsor shall obtain excess insurance which will limit the plan sponsor's total claims liability for each plan year to not more than one hundred twenty-five percent of the expected claims liability as projected by an independent actuary or insurer.

(2) If the expected claims liability of the self-funded portion of the employee benefit plan is exceeded, the plan sponsor shall fund such additional liability by

(a) allocating necessary funds from the operating fund of the general fund, (b) setting up an additional reserve in the operating fund of the general fund, or (c) setting up the monthly accruals at a level to fund claims in excess of the expected claims liability.

(3) An insurer shall pay claims for which it is obligated under excess insurance within three months of the time the claims are paid by the plan sponsor.

(4) A city of the metropolitan or primary class or a county with a population of more than two hundred thousand may provide an employee benefit plan without excess insurance if the city or county obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan.

Source: Laws 1991, LB 167, § 22; Laws 2008, LB734, § 1.
Effective date July 18, 2008.

ARTICLE 20

INTEGRATED SOLID WASTE MANAGEMENT

Section

13-2001 Act, how cited.

Sections 13-2001 to 13-2043 shall be known and may be cited as the Integrated Solid Waste Management Act.

Source: Laws 1992, LB 1257, § 1; Laws 1994, LB 1207, § 1; Laws 2003, LB 143, § 1; Laws 2008, LB202, § 1.
Effective date July 18, 2008.

13-2020.01 Imposition of lien for nonpayment of rates and charges; vote required.

(1) For purposes of this section, elected official means a mayor or a member of a city council, village board of trustees, or county board.

(2) Beginning August 1, 2008, only elected officials who are members or alternate members of the governing body of a joint entity or joint public agency created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that provides services under the Integrated Solid Waste Management Act are authorized to vote on whether a lien should be imposed on real property for nonpayment of rates and charges under subsection (4) of section 13-2020. Notwithstanding any other requirements for action by the governing body, a vote in favor of imposing such a lien by a majority of the members eligible to vote on whether a lien should be imposed is required to impose such a lien.

Source: Laws 2008, LB202, § 2.
Effective date July 18, 2008.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section
13-2603. Terms, defined.
13-2610. Convention Center Support Fund; created; use; investment; distribution to area with high concentration of poverty; development fund; committee.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1)(a) Associated hotel means any publicly owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located within two hundred yards of an eligible facility; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, associated hotel means any publicly or privately owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located within four hundred fifty yards of an eligible facility, measured from the eligible facility but not from any parking facility or other structure;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5)(a) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly or privately owned convention and meeting center facility or publicly or privately owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, eligible facility does not include any publicly or privately owned sports arena facility with a seating capacity greater than sixteen thousand seats;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(7) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created

under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

(8) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(9) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2; Laws 2008, LB912, § 1.
Effective date July 18, 2008.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to area with high concentration of poverty; development fund; committee.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to showcase important historical aspects of such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty

line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects in its area and make the final determination regarding the annual distribution of funding to such projects.

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1.
Effective date April 17, 2008.

Cross References

Limitation on applications, see section 13-2612.
Local Civic, Cultural, and Convention Center Financing Act, see section 13-2701.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 29

POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT

Section

13-2901 Act, how cited.

Sections 13-2901 to 13-2914 shall be known and may be cited as the Political Subdivisions Construction Alternatives Act.

Source: Laws 2002, LB 391, § 1; R.S.1943, (2003), § 79-2001; Laws 2008, LB889, § 1.
Effective date July 18, 2008.

13-2902 Purpose.

The purpose of the Political Subdivisions Construction Alternatives Act is to authorize a political subdivision to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for a public project if the political subdivision adheres to the procedures set forth in the act.

Source: Laws 2002, LB 391, § 2; R.S.1943, (2003), § 79-2002; Laws 2008, LB889, § 2.
Effective date July 18, 2008.

13-2903 Terms, defined.

For purposes of the Political Subdivisions Construction Alternatives Act:

(1) Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the political subdivision, (b) acts as a construction consultant to the political subdivision during the design development phase of the project when the political subdivision's architect or engineer designs the project, and (c) is the builder during the construction phase of the project;

(2) Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the act;

(3) Design-build contract means a contract which is subject to qualification-based selection between a political subdivision and a design-builder to furnish (a) architectural, engineering, and related design services for a project pursuant

to the act and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to the act;

(4) Design-builder means the legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to the act;

(5) Letter of interest means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the act;

(6) Performance-criteria developer means any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by a political subdivision to assist the political subdivision in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of the construction under a design-build contract to determine adherence to the performance criteria, and any additional services requested by the political subdivision to represent its interests in relation to a project;

(7) Political subdivision means a city, village, county, school district, community college, or state college;

(8) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project;

(9) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract for a project pursuant to the Political Subdivisions Construction Alternatives Act or (b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;

(10) Qualification-based selection process means a process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project;

(11) Request for letters of interest means the documentation or publication by which a political subdivision solicits letters of interest;

(12) Request for proposals means the documentation by which a political subdivision solicits proposals; and

(13) School district means any school district classified under section 79-102.

Source: Laws 2002, LB 391, § 3; R.S.1943, (2003), § 79-2003; Laws 2008, LB889, § 3.
Effective date July 18, 2008.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

13-2904 Contracts authorized; governing body; resolution required.

(1) Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute relating to the letting of bids by a political subdivision, a political subdivision which follows the Political Subdivisions Construction Alternatives Act may solicit and execute a design-build contract or a construction management at risk contract.

(2) The governing body of the political subdivision shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system provided under the act prior to proceeding with the provisions of sections 13-2905 to 13-2914. The resolution shall require the affirmative vote of at least two-thirds of the governing body of the political subdivision.

Source: Laws 2002, LB 391, § 4; R.S.1943, (2003), § 79-2004; Laws 2008, LB889, § 4.
Effective date July 18, 2008.

13-2905 Political subdivision; policies; requirements.

The political subdivision shall adopt policies for entering into a design-build contract or construction management at risk contract. The policies shall require that such contracts include the following:

(1) Procedures for selecting and hiring on its behalf a performance-criteria developer when soliciting and executing a design-build contract. The procedures shall be consistent with the Nebraska Consultants' Competitive Negotiation Act and shall provide that the performance-criteria developer (a) is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as performance-criteria developer and (b) is not employed by or does not have a financial or other interest in a design-builder or construction manager who will submit a proposal;

(2) Procedures for the preparation and content of requests for proposals;

(3) Procedures and standards to be used to prequalify design-builders and construction managers. The procedures and standards shall provide that the political subdivision will evaluate prospective design-builders and construction managers based on the information submitted to the political subdivision in response to a request for letters of interest and will select design-builders or construction managers who are prequalified and consequently eligible to respond to the request for proposals;

(4) Procedures for preparing and submitting proposals;

(5) Procedures for evaluating proposals in accordance with sections 13-2908, 13-2910, and 13-2911;

(6) Procedures for negotiations between the political subdivision and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated;

(7) Procedures for filing and acting on formal protests relating to the solicitation or execution of design-build contracts or construction management at risk contracts; and

(8) Procedures for the evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria.

Source: Laws 2002, LB 391, § 5; R.S.1943, (2003), § 79-2005; Laws 2008, LB889, § 5.
Effective date July 18, 2008.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

13-2906 Letters of interest; requirements.

(1) A political subdivision shall prepare a request for letters of interest for design-build proposals and shall prequalify design-builders in accordance with this section. The request for letters of interest shall describe the project in sufficient detail to permit a design-builder to submit a letter of interest.

(2) The request for letters of interest shall be (a) published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving letters of interest and (b) sent by first-class mail to any design-builder upon request.

(3) Letters of interest shall be reviewed by the political subdivision in consultation with the performance-criteria developer. The political subdivision shall select prospective design-builders in accordance with the procedures and standards adopted by the political subdivision pursuant to section 13-2905. The political subdivision shall select at least three prospective design-builders, except that if only two design-builders have submitted letters of interest, the political subdivision shall select at least two prospective design-builders. The selected design-builders shall then be considered prequalified and eligible to receive requests for proposals.

Source Laws 2002, LB 391, § 6; R.S.1943, (2003), § 79-2006; Laws 2008, LB889, § 6.
Effective date July 18, 2008.

13-2907 Design-build contract; request for proposals; requirements.

A political subdivision shall prepare a request for proposals for each design-build contract in accordance with this section. Notice of the request for proposals shall be published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving and opening proposals. A notice of the request for proposals by a school district shall be filed with the State Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

(1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the design-build contract;

(2) Policies adopted by the political subdivision in accordance with section 13-2905;

(3) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;

(4) A project statement which contains information about the scope and nature of the project;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonds and insurance required by law or as may be additionally required by the political subdivision;

(8) The criteria for evaluation of proposals and the relative weight of each criterion;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;

(b) At the time of the design-build offering, the design-builder will furnish to the governing body of the political subdivision a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;

(c) The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the governing body of the political subdivision;

(d) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance; and

(e) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act; and

(11) Other information which the political subdivision chooses to require.

Source: Laws 2002, LB 391, § 7; R.S.1943, (2003), § 79-2007; Laws 2008, LB889, § 7.
Effective date July 18, 2008.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

13-2908 Design-build contract; evaluation of proposals; requirements; negotiations.

(1) A political subdivision shall evaluate proposals for a design-build contract in accordance with this section.

(2) The request for proposals shall be sent only to the prequalified design-builders selected pursuant to section 13-2906.

(3) Design-builders shall submit proposals as required by the request for proposals. The political subdivision may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified design-builders.

(4) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.

(5) Proposals may be withdrawn at any time prior to acceptance. The political subdivision shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Political Subdivisions Construction Alternatives Act. The political subdivision may thereafter solicit new proposals using the same or a different project performance criteria.

(6) The political subdivision shall rank in order of preference the design-builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.

(7) The political subdivision may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the political subdivision and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the political subdivision may terminate negotiations with that design-builder. The political subdivision may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the political subdivision is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the political subdivision may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(8) A school district shall file a copy of all design-build contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the design-builder shall file a copy of all contract modifications and change orders with the department.

(9) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked design-builders, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the design-build process under the act.

Source: Laws 2002, LB 391, § 8; R.S.1943, (2003), § 79-2008; Laws 2008, LB889, § 8.
Effective date July 18, 2008.

13-2909 Construction management at risk contract; request for proposals; requirements.

A political subdivision shall prepare a request for proposals for each construction management at risk contract in accordance with this section. At least thirty days prior to the deadline for receiving and opening proposals, notice of the request for proposals shall be published in a newspaper of general circulation within the political subdivision. A notice of the request for proposals by a school district shall be filed with the State Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

(1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the contract;

(2) Policies adopted by the political subdivision in accordance with section 13-2905;

(3) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;

(4) Any bonds and insurance required by law or as may be additionally required by the political subdivision;

(5) General information about the project which will assist the political subdivision in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(6) The criteria for evaluation of proposals and the relative weight of each criterion; and

(7) A description of any other information which the political subdivision chooses to require.

Source: Laws 2002, LB 391, § 9; R.S.1943, (2003), § 79-2009; Laws 2008, LB889, § 9.
Effective date July 18, 2008.

13-2910 Construction management at risk contract; evaluation of proposals; requirements; negotiations.

(1) A political subdivision shall evaluate proposals for a construction management at risk contract in accordance with this section.

(2) The political subdivision shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.

(3) The political subdivision shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory contract with the highest ranked construction manager, the political subdivision may terminate negotiations with that construction manager. The political subdivision may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations. If the political subdivision is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the political subdivision may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

(4) A school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the

construction manager shall file a copy of all contract modifications and change orders with the department.

(5) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked construction managers, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the Political Subdivisions Construction Alternatives Act.

Source: Laws 2002, LB 391, § 10; R.S.1943, (2003), § 79-2010; Laws 2008, LB889, § 10.
Effective date July 18, 2008.

13-2911 Contract proposals; evaluation; selection committee; duties.

(1) In evaluating proposals in accordance with sections 13-2908 and 13-2910, the political subdivision shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the political subdivision. Members of the selection committee shall include (a) members of the governing body of the political subdivision, (b) members of the administration or staff of the political subdivision, (c) the performance-criteria developer when evaluating proposals from design-builders under section 13-2908 or the political subdivision's architect or engineer when evaluating proposals from construction managers under section 13-2910, (d) any person having special expertise relevant to selection of a design-builder or construction manager under the Political Subdivisions Construction Alternatives Act, and (e) a resident of the political subdivision other than an individual included in subdivisions (a) through (d) of this subsection. A member of the selection committee designated under subdivision (d) or (e) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.

(2) The selection committee and the political subdivision shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (a) through (g) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

(a) The financial resources of the design-builder or construction manager to complete the project, ten percent;

(b) The ability of the proposed personnel of the design-builder or construction manager to perform, thirty percent;

(c) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty percent;

(d) The quality of performance on previous projects, thirty percent;

(e) The ability of the design-builder or construction manager to perform within the time specified, thirty percent;

(f) The previous and existing compliance of the design-builder or construction manager with laws relating to the contract, ten percent; and

(g) Such other information as may be secured having a bearing on the selection, twenty percent.

(3) The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of section 84-712.01.

Source: Laws 2002, LB 391, § 11; R.S.1943, (2003), § 79-2011; Laws 2008, LB889, § 11.
Effective date July 18, 2008.

13-2912 Contracts; refinements; changes authorized.

A design-build contract and a construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the political subdivision in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract. Later refinements under this section shall not exceed the scope of the project statement contained in the request for proposals pursuant to section 13-2907 or 13-2909.

Source: Laws 2002, LB 391, § 12; R.S.1943, (2003), § 79-2012; Laws 2008, LB889, § 12.
Effective date July 18, 2008.

13-2913 Act; bonding or insurance requirements.

Nothing in the Political Subdivisions Construction Alternatives Act shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.

Source: Laws 2002, LB 391, § 13; R.S.1943, (2003), § 79-2013; Laws 2008, LB889, § 13.
Effective date July 18, 2008.

13-2914 Projects excluded.

A political subdivision shall not use a design-build contract or construction management at risk contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction, except that a city of the metropolitan class may use a design-build contract or construction management at risk contract for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers.

Source: Laws 2008, LB889, § 14.
Effective date July 18, 2008.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

ARTICLE 1
GENERAL POWERS

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons and the discharge of firearms, fireworks, or explosives of any description within the city;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed in pursuance of this act to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city to be cut and destroyed so as to abate any nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be

directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal, disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in

this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for

the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad

systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire under the provisions of this act, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1.
Effective date July 18, 2008.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.
"This act", defined, see section 14-101.

CHAPTER 15
CITIES OF THE PRIMARY CLASS

ARTICLE 2
GENERAL POWERS

15-220 Dogs and other animals; licensing; regulation.

A primary city shall have power to regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals.

Source: Laws 1901, c. 16, § 129, XXIV, p. 133; R.S.1913, § 4434; C.S. 1922, § 3818; C.S.1929, § 15-221; R.S.1943, § 15-220; Laws 1981, LB 501, § 2; Laws 1997, LB 814, § 3; Laws 2008, LB806, § 2.
Effective date July 18, 2008.

Cross References

For other provisions for regulation of dogs and cats, see sections 15-218, 54-601 to 54-624, and 71-4401 to 71-4412.

CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
2. General Powers. 16-206 to 16-222.03.
3. Officers, Elections, Employees. 16-321.
11. First-Class City Merger Act. 16-1101 to 16-1115.

ARTICLE 2
GENERAL POWERS

Section
16-206. Dogs and other animals; regulation; license tax; enforcement.
16-222.01. Emergency response systems; legislative findings.
16-222.02. Employment of full-time fire chief; appointment; duties.
16-222.03. Fire chief; annual report; contents; report to city council.

16-206 Dogs and other animals; regulation; license tax; enforcement.

A city of the first class may collect a license tax from the owners and harborers of dogs and other animals in an amount which shall be determined by the governing body of such city and enforce the same by appropriate penalties. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. The city may cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. It may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1901, c. 18, § 48, X, p. 247; R.S.1913, § 4822; C.S.1922, § 3990; C.S.1929, § 16-207; R.S.1943, § 16-206; Laws 1959, c. 59, § 1, p. 253; Laws 1971, LB 478, § 1; Laws 1981, LB 501, § 3; Laws 1997, LB 814, § 4; Laws 2008, LB806, § 3.
Effective date July 18, 2008.

16-222.01 Emergency response systems; legislative findings.

The Legislature finds that matters relating to emergency medical first response and fire protection are matters of state concern, particularly in larger cities that rely primarily or entirely upon volunteers to provide these services. Recognizing the increasing complexity and difficulty of providing these services, the stringent and growing training demands made upon volunteers, the demographics of an aging population, the economic pressures that deny or inhibit employers from granting the opportunity for volunteers to respond to emergency calls during business hours, and the economic costs to residents and businesses of financing either a paid or partly paid emergency response system, the Legislature hereby declares the necessity of establishing a system and process whereby certain cities of the first class would be required to review,

study, and modify on a continuing basis their emergency response systems, with appropriate public input, based upon local conditions and circumstances.

Source: Laws 2008, LB1096, § 1.
Effective date July 18, 2008.

16-222.02 Employment of full-time fire chief; appointment; duties.

Not later than January 5, 2009, each city of the first class with a population in excess of thirty-seven thousand five hundred inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2.
Effective date July 18, 2008.

16-222.03 Fire chief; annual report; contents; report to city council.

(1) In addition to such other duties as may be performed by the fire chief employed pursuant to section 16-222.02, he or she shall keep and maintain full and complete records regarding the twelve-month period ending thirty days prior to the annual report of the chief to the city council as provided for in subsection (2) of this section. Such records include, but are not limited to, the number of volunteers in active volunteer service providing emergency response services to the city including their ages, the amount and type of training received by each volunteer during the course of his or her time of service as an active volunteer, the number of new volunteers recruited during such period, the number of volunteers who ceased to be active volunteers during that period, the basic information regarding each volunteer specified in section 35-1309.01, the number and nature of calls or requests for emergency services, the response time for each call, to be calculated from the time of receipt of the dispatch to the time of arrival of the first fire or rescue emergency response vehicle at the site of the request, the number of volunteers responding to each call, and the time each call was received. The city council may specify any additional information to be gathered or collected by the fire chief or as the fire chief may recommend.

(2) The fire chief shall collate and analyze the information gathered pursuant to subsection (1) of this section and shall, no less than once in any twelve-month period, on a date specified by the city council, provide a report to the city council at a regular council meeting on the prior year's experience regarding the volunteer department and shall make such recommendations as he or she deems appropriate.

Source: Laws 2008, LB1096, § 3.
Effective date July 18, 2008.

ARTICLE 3
OFFICERS, ELECTIONS, EMPLOYEES

Section
16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

16-321 City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

(1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council.

(3) Except as provided in section 18-412.01, before the city council makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the council. In advertising for bids as provided in subsections (4) and (6) of this section, the council may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of

one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 16-405 when adopted by a three-fourths vote of the council and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council receives fewer than two bids on a contract or if the bids received by the city council contain a price which exceeds the estimated cost, the mayor and the city council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1901, c. 18, § 29, p. 237; R.S.1913, § 4887; C.S.1922, § 4055; Laws 1925, c. 44, § 1, p. 174; C.S.1929, § 16-317; R.S.1943, § 16-321; Laws 1947, c. 26, § 2, p. 128; Laws 1951, c. 25, § 1, p. 115; Laws 1959, c. 61, § 1, p. 276; Laws 1969, c. 78, § 1, p. 407; Laws 1971, LB 85, § 1; Laws 1975, LB 171, § 1; Laws 1979, LB 356, § 1; Laws 1983, LB 304, § 1; Laws 1984, LB 540, § 7; Laws 1997, LB 238, § 1; Laws 2008, LB947, § 1. Effective date July 18, 2008.

ARTICLE 11

FIRST-CLASS CITY MERGER ACT

Section
16-1101. Act, how cited.
16-1102. Terms, defined.
16-1103. Merger authorized.
16-1104. Merger plan; city council; adopt resolution; advisory vote; notice.
16-1105. Merger plan; contents; advisory committee.
16-1106. Public hearing; notice.
16-1107. Adoption of joint merger plan.
16-1108. Submission of joint merger plan to voters.
16-1109. Submission of plan to voters; notice; publication; contents.
16-1110. Question submitted to voters; form; effective date of plan.
16-1111. Nominations for merged city offices; special election.
16-1112. Election of merged city officers; terms; appointive city officers; terms.

Section
16-1113. Merged cities; name; rights, privileges, franchises, property, and suits; how treated.
16-1114. Merger; deemed permanent.
16-1115. Joint sessions of city councils; authorized.

16-1101 Act, how cited.

Sections 16-1101 to 16-1115 shall be known and may be cited as the First-Class City Merger Act.

Source: Laws 2008, LB1056, § 1.
Effective date July 18, 2008.

16-1102 Terms, defined.

For purposes of the First-Class City Merger Act:

(1) City means a city of the first class; and

(2) Merger means a full and permanent union of two or more cities of the first class, resulting in one city.

Source: Laws 2008, LB1056, § 2.
Effective date July 18, 2008.

16-1103 Merger authorized.

Any two or more contiguous and adjacent cities of the first class in the state may merge by complying with the requirements and procedures specified in the First-Class City Merger Act. Merger shall not be allowed across county lines.

Source: Laws 2008, LB1056, § 3.
Effective date July 18, 2008.

16-1104 Merger plan; city council; adopt resolution; advisory vote; notice.

(1) To enter into a merger plan, each city council of any two or more contiguous and adjacent cities shall adopt an initial joint concurrent resolution of intent to pursue such plan.

(2) If a resolution is adopted pursuant to subsection (1) of this section, the city councils of each city involved may hold an advisory vote at any general, primary, or special election if the advisory vote is presented to voters of all cities involved on the same day. Notice of the advisory vote to be voted on at a special election shall be given in the manner of notice for special elections in accordance with the Election Act. The result of the vote cast on a question submitted under this subsection shall not be binding upon such city councils.

Source: Laws 2008, LB1056, § 4.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

16-1105 Merger plan; contents; advisory committee.

(1) After adoption of a resolution pursuant to section 16-1104 by the city councils of any two or more cities, such city councils may propose a merger plan subject to the First-Class City Merger Act.

(2) A merger plan shall include, but not be limited to, (a) the names of the cities which propose to merge, (b) the name under which the cities would merge, (c) the manner of financing and allocating all costs associated with the plan, (d) the property, real and personal, belonging to each city and the fair value thereof in current money of the United States, (e) the indebtedness, bonded and otherwise, of each city and the plan for repayment of the indebtedness after merger, (f) how the local ballot initiatives enacted in either city, if any, will be reconciled or terminated after merger, (g) if the cities have different forms of organization and government, the proposed form of organization and government of the merged city, (h) the redistricting of the newly merged city, including the number of wards and elected representatives from each ward, (i) the pay and perquisites of the mayor and city council, (j) the treatment of related city entities such as the housing authority, airport authority, or other city authority, and (k) any other terms of the agreement. A merger plan shall not be considered an interlocal cooperation agreement pursuant to the Interlocal Cooperation Act.

(3) Each city council may appoint an advisory committee to assist the council in the preparation of the merger plan.

Source: Laws 2008, LB1056, § 5.
Effective date July 18, 2008.

Cross References

Interlocal Cooperation Act, see section 13-801.

16-1106 Public hearing; notice.

After adoption of a resolution pursuant to section 16-1104 and preparation of the required merger plan pursuant to section 16-1105, the city council of each city proposing to enter into such plan shall hold a public hearing on the plan and shall give notice of the hearing by publication in a newspaper of general circulation in the city once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the contents of the plan and specify that a copy of the plan may be obtained at no charge at the city clerk's office.

Source: Laws 2008, LB1056, § 6.
Effective date July 18, 2008.

16-1107 Adoption of joint merger plan.

After a public hearing held pursuant to section 16-1106, the city council of each city shall adopt the joint merger plan by a majority vote of the council.

Source: Laws 2008, LB1056, § 7.
Effective date July 18, 2008.

16-1108 Submission of joint merger plan to voters.

If a merger plan is adopted pursuant to section 16-1107, the city council of each city adopting such plan shall submit the plan for approval by the registered voters at a primary or special election held on the same day in each of the cities which are parties to the plan, not less than one hundred eighty days

prior to the next statewide general election. An election held pursuant to this section shall be conducted in accordance with the Election Act.

Source: Laws 2008, LB1056, § 8.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

16-1109 Submission of plan to voters; notice; publication; contents.

When a merger plan is submitted to the voters for approval pursuant to section 16-1108, the city council of each city adopting the plan shall publish a notice at least once each week for three consecutive weeks prior to the election in one or more newspapers of general circulation in the city. Final publication in each city shall be within seven calendar days prior to the election pursuant to section 16-1110. The notice shall describe the contents of the plan and specify that a copy of the plan may be obtained at no charge at the city clerk's office.

Source: Laws 2008, LB1056, § 9.
Effective date July 18, 2008.

16-1110 Question submitted to voters; form; effective date of plan.

(1) After publication pursuant to section 16-1109, each city council shall submit the question as proposed in the merger plan to the registered voters of the city as provided in section 16-1108.

(2) The question shall be submitted to the voters in substantially the following form:

''Shall (name of city in which ballot will be voted) merge with (name of other city or cities) according to the merger plan previously adopted by the city councils in such cities? Yes No''.

(3) The election shall be conducted in accordance with the Election Act. The election commissioner or county clerk shall certify the results to each city council involved in the plan.

(4) If a majority of the voters of each city voting on the question vote in favor of the merger plan, the plan shall become effective at the first regular meeting of the city council in December following the election, and the terms of the incumbents in the offices involved in the plan shall be deemed to end on that day.

Source: Laws 2008, LB1056, § 10.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

16-1111 Nominations for merged city offices; special election.

Candidates for merged city offices shall be nominated at a special election to be held no less than thirty days after the election at which the merger is approved by the voters and no less than sixty days prior to the next statewide general election. The election shall be held in accordance with the Election Act.

Source: Laws 2008, LB1056, § 11.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

16-1112 Election of merged city officers; terms; appointive city officers; terms.

(1) At the next statewide general election held after the election at which the merger is approved by the voters, the merged city officers shall be elected. Their terms shall begin at the first regular meeting of the city council in December following their election, and the terms of the incumbents in the offices involved in the plan shall be deemed to end on that day. The initial term of a merged officer shall be set forth in the merger plan.

(2) All appointive city officers shall be appointed by the person, council, or authority upon whom the power is conferred to appoint such officers in other cities of the first class. The terms of such officers shall begin at the first regular meeting of the city council in December following the first election of officers for the merged city and shall continue, unless otherwise removed, until their successors have been appointed and qualified.

Source: Laws 2008, LB1056, § 12.
Effective date July 18, 2008.

16-1113 Merged cities; name; rights, privileges, franchises, property, and suits; how treated.

(1) Upon the effective date of a merger plan, the cities involved in the plan shall be treated under the name and upon the terms and conditions set forth in the plan. Except as provided in subsections (6) and (7) of this section, statutory references to the names of the cities as they existed prior to the merger plan shall be deemed to reference the name of the merged city as set forth in the plan.

(2) All rights, privileges, and franchises of each of the several cities, all real and personal property, all rights-of-way, all other interests, and all debts due on whatever account, as well as other things in action, belonging to each of such cities, shall be deemed as transferred to and vested in the merged city without further act or deed. All records, books, and documents shall be transferred to and vested in the merged city. All money on hand and accounts receivable shall be distributed pursuant to the merger plan.

(3) The title to real property, either by deed or otherwise, under the laws of this state vested in any of the cities, shall not be deemed to revert or be in any way impaired by reason of merger, but the rights of creditors and all liens upon the property of any of the cities shall be preserved unimpaired.

(4) Suits may be brought and maintained against such merged city in any of the courts of this state in the same manner as against any other city of the first class. Pursuant to the merger plan, any action or proceeding pending by or against any of the cities may be prosecuted to judgment and the merged city may be substituted in its place.

(5) The boundaries for school districts and election districts for offices other than the merged offices shall continue as prior to merger unless and until changed in accordance with law.

(6) For purposes of political representation, the existing boundaries for such districts shall continue until changed in accordance with law.

(7) Such merged city shall in all respects, except as provided in the First-Class City Merger Act, be subject to all the obligations and liabilities imposed and shall possess all the rights, powers, and privileges vested by law in other cities of the first class.

Source: Laws 2008, LB1056, § 13.
Effective date July 18, 2008.

16-1114 Merger; deemed permanent.

Merger according to the First-Class City Merger Act is deemed permanent, and no withdrawal or dissolution shall be permitted.

Source: Laws 2008, LB1056, § 14.
Effective date July 18, 2008.

16-1115 Joint sessions of city councils; authorized.

The city councils of two or more cities of the first class may meet and hold joint sessions for purposes of the First-Class City Merger Act.

Source: Laws 2008, LB1056, § 15.
Effective date July 18, 2008.

CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

ARTICLE 5
GENERAL GRANT OF POWER

17-526 Dogs and other animals; license tax; enforcement.

Second-class cities and villages may, by ordinance entered at large on the proper journal or record of proceedings of such municipality, impose a license tax in an amount which shall be determined by the governing body of such second-class city or village for each dog or other animal, on the owners and harborers of dogs and other animals, and enforce the same by appropriate penalties, and cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. Such municipality may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1879, § 69, X, p. 213; Laws 1881, c. 23, § 8, X, p. 175; Laws 1885, c. 20, § 1, X, p. 165; Laws 1887, c. 12, § 1, X, p. 294; Laws 1899, c. 14, § 1, p. 79; R.S.1913, § 5116; C.S.1922, § 4289; C.S.1929, § 17-438; R.S.1943, § 17-526; Laws 1959, c. 59, § 2, p. 253; Laws 1976, LB 515, § 1; Laws 1981, LB 501, § 4; Laws 1997, LB 814, § 5; Laws 2008, LB806, § 4.
Effective date July 18, 2008.

17-568.01 City or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board; powers and duties; public emergency.

(1) The city or village engineer shall, when requested by the mayor, city council, or village board, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council or board may require. When a city has appointed a board of public works, and the mayor and city council have by

ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council or village board.

(3) Except as provided in section 18-412.01, before the city council or village board makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city or village engineer and submitted to the council or village board. In advertising for bids as provided in subsections (4) and (6) of this section, the city council or village board may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city or village and, if there is no legal newspaper published in or of general circulation in such city or village, then in some newspaper of general circulation published in the county wherein such city or village is located, and if there is no legal newspaper of general circulation published in the county wherein such city or village is located then in a newspaper, designated by the county board, having a general circulation within the county where bids are required, and if no newspaper is published in the city, village, or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three public places in the city or village at least seven days prior to the

bid closing. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the council or board of trustees and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council or village board receives fewer than two bids on a contract or if the bids received by the city council or village board contain a price which exceeds the estimated cost, the mayor and the city council or village board may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202; C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(2), p. 98; Laws 1951, c. 34, § 1, p. 134; Laws 1957, c. 32, § 1, p. 195; Laws 1959, c. 61, § 2, p. 277; Laws 1969, c. 78, § 2, p. 409; Laws 1975, LB 171, § 2; Laws 1979, LB 356, § 2; Laws 1983, LB 304, § 4; Laws 1984, LB 540, § 8; Laws 1997, LB 238, § 3; Laws 2008, LB947, § 2.
Effective date July 18, 2008.

CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

ARTICLE 24
MUNICIPAL COOPERATIVE FINANCING

18-2442 Construction and other contracts; cost estimate; sealed bids; when; exceptions.

(1) An agency shall cause estimates of the costs to be made by some competent engineer or engineers before the agency enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the agency, of any:

(i) Power project, power plant, or system;

(ii) Irrigation works; or

(iii) Part or section of a project, plant, system, or works described in subdivision (i) or (ii) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in a project, plant, system, or works described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 relating to sealed bids shall not apply to contracts entered into by an agency in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or sections 18-2443 and 18-2444 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The agency advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be

contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects, plants, systems, or works described in subdivision (1)(a) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1981, LB 132, § 42; Laws 1999, LB 566, § 1; Laws 2007, LB636, § 5; Laws 2008, LB939, § 2.
Effective date July 18, 2008.

ARTICLE 27
MUNICIPAL ECONOMIC DEVELOPMENT

Section
18-2720. Loan fund program; loan servicing requirements.

18-2720 Loan fund program; loan servicing requirements.

(1) If the economic development program involves the establishment of a loan fund, the governing body of the city shall designate an appropriate individual to assume primary responsibility for loan servicing and shall provide such other assistance or additional personnel as may be required. The individual may be an employee of the city, or the city may contract with an appropriate business or financial institution for loan servicing functions. The governing body of the city shall be provided with an account of the status of each loan outstanding, program income, and current investments of unexpended funds on a monthly basis. Program income shall mean payments of principal and interest on loans made from the loan fund and the interest earned on these funds.

(2) Records kept on such accounts and reports made to the governing body of the city shall include, but not be limited to, the following information: (a) The name of the borrower; (b) the purpose of the loan; (c) the date the loan was made; (d) the amount of the loan; (e) the basic terms of the loan, including the interest rate, the maturity date, and the frequency of payments; and (f) the payments made to date and the current balance due.

(3) The individual responsible for loan servicing shall monitor the status of each loan and, with the cooperation of the governing body of the city and the primary lender or lenders, take appropriate action when a loan becomes delinquent. The governing body shall establish standards for the determination of loan delinquency, when a loan shall be declared to be in default, and what action shall be taken to deal with the default to protect the interests of the qualifying business, third parties, and the city. The governing body shall establish a process to provide for consultation, agreement, and joint action between the city and the primary lender or lenders in pursuing appropriate remedies following the default of a qualifying business in order to collect amounts owed under the loan.

Source: Laws 1991, LB 840, § 21; Laws 2008, LB895, § 1.
Effective date April 18, 2008.

CHAPTER 20
CIVIL RIGHTS

Article.
1. Individual Rights.
(b) Persons with Disabilities. 20-126.01 to 20-131.04.

ARTICLE 1
INDIVIDUAL RIGHTS

(b) PERSONS WITH DISABILITIES

Section
20-126.01. Physically disabled person, defined.
20-127. Rights enumerated.
20-128. Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.
20-129. Denying or interfering with admittance to public facilities; penalty.
20-131.02. Housing accommodations; terms, defined.
20-131.04. Service animal; access to housing accommodations; terms and conditions.

(b) PERSONS WITH DISABILITIES

20-126.01 Physically disabled person, defined.

For purposes of sections 20-126 to 20-131, physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1997, LB 254, § 1; Laws 2008, LB806, § 5.
Effective date July 18, 2008.

20-127 Rights enumerated.

(1) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person has the same right as any other person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(3) A totally or partially blind person, deaf or hard of hearing person, or physically disabled person has the right to be accompanied by a service animal, especially trained for the purpose, and a bona fide trainer of a service animal has the right to be accompanied by such animal in training in any of the places listed in subsection (2) of this section without being required to pay an extra

charge for the service animal. Such person shall be liable for any damage done to the premises or facilities or to any person by such animal.

(4) A totally or partially blind person has the right to make use of a white cane in any of the places listed in subsection (2) of this section.

Source: Laws 1971, LB 496, § 2; R.S.Supp.,1971, § 43-634; Laws 1980, LB 932, § 2; Laws 1997, LB 254, § 3; Laws 2003, LB 667, § 1; Laws 2008, LB806, § 6.
Effective date July 18, 2008.

20-128 Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.

In addition to the provisions of sections 28-1313 and 28-1314, the driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color or using a service animal or a hearing-impaired or physically disabled pedestrian who is using a service animal shall take all necessary precautions to avoid injury to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A totally or partially blind pedestrian not carrying such a cane or using a service animal or a hearing-impaired or physically disabled pedestrian not using a service animal in any of the places, accommodations, or conveyances listed in section 20-127 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a service animal or the failure of a hearing-impaired or physically disabled pedestrian to use a service animal in any such places, accommodations, or conveyances does not constitute and is not evidence of contributory negligence.

Source: Laws 1971, LB 496, § 3; R.S.Supp.,1971, § 43-635; Laws 1978, LB 748, § 2; Laws 1980, LB 932, § 3; Laws 1997, LB 254, § 4; Laws 2008, LB806, § 7.
Effective date July 18, 2008.

20-129 Denying or interfering with admittance to public facilities; penalty.

(1) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a totally or partially blind, deaf or hard of hearing, or physically disabled person under section 20-127 or sections 20-131.01 to 20-131.04 is guilty of a Class III misdemeanor.

(2) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a bona fide trainer of a service animal when training such animal under section 20-127 is guilty of a Class III misdemeanor.

Source: Laws 1971, LB 496, § 4; R.S.Supp.,1971, § 43-636; Laws 1975, LB 83, § 5; Laws 1977, LB 40, § 76; Laws 1980, LB 932, § 4; Laws 1997, LB 254, § 5; Laws 2003, LB 667, § 2; Laws 2008, LB806, § 8.
Effective date July 18, 2008.

20-131.02 Housing accommodations; terms, defined.

For purposes of sections 20-131.01 to 20-131.04, unless the context otherwise requires:

(1) Housing accommodations means any real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. Housing accommodations does not include any single-family residence in which the owner lives and in which any room is rented, leased, or provided for compensation to persons other than the owner or primary tenant; and

(2) Physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1975, LB 83, § 2; Laws 1997, LB 254, § 6; Laws 2008, LB806, § 9.
Effective date July 18, 2008.

20-131.04 Service animal; access to housing accommodations; terms and conditions.

Every totally or partially blind person, hearing-impaired person, or physically disabled person who has a service animal or obtains a service animal shall have full and equal access to all housing accommodations with such animal as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such animal. Such person shall be liable for any damage done to such premises by such animal. Any person who rents, leases, or provides housing accommodations for compensation to any totally or partially blind person, hearing-impaired person, or physically disabled person who has or obtains a service animal shall not charge an additional deposit for such animal.

Source: Laws 1975, LB 83, § 4; Laws 1980, LB 932, § 6; Laws 1997, LB 254, § 7; Laws 2008, LB806, § 10.
Effective date July 18, 2008.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

ARTICLE 3
OCCUPATION TAX

21-301 Domestic corporations; biennial report and fee; procedure.

(1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be

submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1.
Effective date July 18, 2008.

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the corporation;

(2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the corporation's principal office;

(4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the corporation's business;

(6) The amount of paid-up capital stock; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2.
Effective date July 18, 2008.

Cross References

Business Corporation Act, see section 21-2001.

21-304 Foreign corporations; biennial report and fee; procedure.

(1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements

required by law, make a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3.
Effective date July 18, 2008.

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the foreign corporation's principal office;

(4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the foreign corporation's business;

(6) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last annual report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5,

p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4.
Effective date July 18, 2008.

Cross References

Business Corporation Act, see section 21-2001.

ARTICLE 13
COOPERATIVE COMPANIES

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

21-1302 Cooperative corporation; articles of incorporation; contents.

Every such cooperative company shall provide in its articles of incorporation:

(1) That the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative corporation;

(2) That dividends on the capital stock shall be fixed but shall not exceed eight percent per annum of the amount actually paid thereon;

(3) That the net earnings or savings of the company remaining after making the distribution provided in subdivision (2) of this section, if any, shall be distributed on the basis of or in proportion to the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation. This subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled. This subdivision and subdivision (2) of this section shall not be so interpreted as to prevent a company from appropriating funds for the promotion of cooperation and improvement in agriculture;

(4) That the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings;

(5) The registered office and street address of such registered office;

(6) The current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and

(7) The name and street address of each incorporator.

Source: Laws 1921, c. 28, § 2, p. 161; C.S.1922, § 643; Laws 1925, c. 79, § 2, p. 243; C.S.1929, § 24-1302; R.S.1943, § 21-1302; Laws 1963, c. 102, § 2, p. 423; Laws 1967, c. 103, § 1, p. 318; Laws 2008, LB379, § 5.
Effective date July 18, 2008.

ARTICLE 14
NONSTOCK COOPERATIVE MARKETING COMPANIES

21-1403 Articles of incorporation; contents.

Every nonstock cooperative association organized under the provisions of Chapter 21, article 14, shall provide in its articles of incorporation: (1) That the words nonstock cooperative shall be included in its corporate name and that it proposes to organize as a cooperative association; (2) the objects or purposes for which it is formed; (3) that the net earnings or savings of the association, if any, shall be distributed on the basis of, or in proportion to, the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation, except that this subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled; (4) that the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings; (5) the registered office and street address of such registered office; (6) the current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and (7) the name and street address of each incorporator.

Source: Laws 1925, c. 80, § 3, p. 248; C.S.1929, § 24-1403; R.S.1943, § 21-1403; Laws 1967, c. 104, § 1, p. 320; Laws 1981, LB 283, § 3; Laws 2008, LB379, § 6.
Effective date July 18, 2008.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2008, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01;

Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17.
Operative date March 20, 2008.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

(1)(i) Articles of incorporation or (ii) documents relating to domestication...$10.00

(2) Application for reserved name...$25.00

(3) Notice of transfer of reserved name...$25.00

(4) Application for registered name...$25.00

(5) Application for renewal of registered name...$25.00

(6) Corporation's statement of change of registered agent or registered office or both...$5.00

(7) Agent's statement of change of registered office for each affected corporation...$25.00 (not to exceed a total of $1,000)

(8) Agent's statement of resignation...no fee

(9) Amendment of articles of incorporation...$5.00

(10) Restatement of articles of incorporation with amendments...$5.00

(11) Articles of merger...$5.00

(12) Articles of dissolution...$5.00

(13) Articles of revocation of dissolution...$5.00

(14) Certificate of administrative dissolution...no fee

(15) Application for reinstatement following administrative dissolution...$5.00

(16) Certificate of reinstatement...no fee

(17) Certificate of judicial dissolution...no fee

(18) Certificate of authority...$10.00

(19) Application for amended certificate of authority...$5.00

(20) Application for certificate of withdrawal...$5.00

(21) Certificate of revocation of authority to transact business...no fee

(22) Biennial report...$20.00

(23) Articles of correction...$5.00

(24) Application for certificate of good standing...$10.00

(25) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act...$5.00

(i) Amendments...$5.00

(ii) Mergers...$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) $1.00 per page; and

(2) $10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1.
Effective date July 18, 2008.

(b) ORGANIZATION

21-1921 Articles of incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-1931;

(2) One of the following statements:

(i) This corporation is a public benefit corporation;

(ii) This corporation is a mutual benefit corporation; or

(iii) This corporation is a religious corporation;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and street address of each incorporator;

(5) Whether or not the corporation will have members; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) The names and street addresses of the individuals who are to serve as the initial directors;

(3) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(4) Any provision that under the Nebraska Nonprofit Corporation Act is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in the act.

Source: Laws 1996, LB 681, § 21; Laws 2008, LB379, § 7.
Effective date July 18, 2008.

(e) OFFICE AND AGENT

21-1934 Registered office; registered agent.

Each corporation must continuously maintain in this state:

(1) A registered office with the same street address as that of the registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 34; Laws 2008, LB379, § 8.
Effective date July 18, 2008.

21-1935 Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's office is changed, the registered agent may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 35; Laws 2008, LB379, § 9.
Effective date July 18, 2008.

(n) FOREIGN CORPORATIONS

21-19,148 Foreign corporation; application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-19,151;

(2) The name of the state or country under whose law it is incorporated;

(3) The date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address;

(6) The names and street addresses of its current directors and officers;

(7) Whether the foreign corporation has members; and

(8) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1996, LB 681, § 148; Laws 2008, LB379, § 10.
Effective date July 18, 2008.

21-19,152 Foreign corporation; registered office; registered agent.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office with the same address as that of its current registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 152; Laws 2008, LB379, § 11.
Effective date July 18, 2008.

21-19,153 Foreign corporation; change of registered office or registered agent.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 153; Laws 2008, LB379, § 12.
Effective date July 18, 2008.

21-19,161 Foreign corporation; domestication procedure.

In lieu of compliance with section 21-19,146, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states, which has heretofore filed, or which may hereafter file, with the Secretary of State of this state, a copy

certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date and the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Nonprofit Corporation Act, with respect to its property and business operations within this state, shall become and be a body corporate of this state.

Source: Laws 1996, LB 681, § 161; Laws 2008, LB379, § 13.
Effective date July 18, 2008.

(o) RECORDS AND REPORTS

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or

foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14.
Effective date July 18, 2008.

ARTICLE 20

BUSINESS CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

21-2005 Fees.

(1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be $300.

(c) Application for reserved name...$25

(d) Notice of transfer of reserved name...$25

(e) Application for registered name...$25

(f) Application for renewal of registered name...$25

(g) Corporation's statement of change of registered agent or registered office or both...$25

(h) Agent's statement of change of registered office for each affected corporation...$25 not to exceed a total of...$1,000

(i) Agent's statement of resignation...No fee

(j) Amendment of articles of incorporation...$25

(k) Restatement of articles of incorporation...$25 with amendment of articles...$25

(l) Articles of merger or share exchange...$25

(m) Articles of dissolution...$45

(n) Articles of revocation of dissolution...$25

(o) Certificate of administrative dissolution...No fee

(p) Application for reinstatement...$25

(q) Certificate of reinstatement...No fee

(r) Certificate of judicial dissolution...No fee

(s) Application for certificate of authority...$130

(t) Application for amended certificate of authority...$25

(u) Application for certificate of withdrawal...$25

(v) Certificate of revocation of authority to transact business...No fee

(w) Articles of correction...$25

(x) Application for certificate of existence or authorization...$25

(y) Any other document required or permitted to be filed by the Business Corporation Act...$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1; Laws 2008, LB907, § 2.
Effective date July 18, 2008.

(b) INCORPORATION

21-2018 Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) The corporate name for the corporation that satisfies the requirements of section 21-2028;

(b) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(d) The name and street address of each incorporator; and

(e) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940. The provision shall not be effective if such corporation does not become or ceases to be so registered.

(2) The articles of incorporation may set forth:

(a) The names and street addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders; and

(iv) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under the Business Corporation Act is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of section 21-2096; or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 21-20,102, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which he or she is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2096, or (iv) an intentional violation of criminal law.

(3) The articles of incorporation shall not be required to set forth any of the corporate powers enumerated in the act.

Source: Laws 1995, LB 109, § 18; Laws 2008, LB379, § 15.
Effective date July 18, 2008.

(e) OFFICE AND AGENT

21-2032 Change of registered office or registered agent.

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 32; Laws 2008, LB379, § 16.
Effective date July 18, 2008.

(n) FOREIGN CORPORATIONS

21-20,170 Foreign corporation; certificate of authority; application.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-20,173;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(f) The names and street addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1995, LB 109, § 170; Laws 2008, LB379, § 17.
Effective date July 18, 2008.

21-20,175 Foreign corporation; change of registered office or registered agent.

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address or post office box number of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 175; Laws 2008, LB379, § 18.
Effective date July 18, 2008.

21-20,181.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-20,168, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or

which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 1996, LB 1036, § 8; Laws 2008, LB379, § 19.
Effective date July 18, 2008.

ARTICLE 22

PROFESSIONAL CORPORATIONS

Section
21-2216. Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant

for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the Secretary of State shall access the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee of fifty dollars. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service or an ancillary service as those for which the professional corporation was organized. Verification shall be done by electronically accessing the regulating board's licensing records. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18; Laws 2008, LB379, § 20.
Effective date July 18, 2008.

ARTICLE 23

NEBRASKA INDUSTRIAL DEVELOPMENT CORPORATION ACT

Section
21-2304. Articles of incorporation; contents.

21-2304 Articles of incorporation; contents.

The articles of incorporation shall set forth: (1) The names and residences of the applicants together with a recital that each of them is an elector of and taxpayer in the local political subdivision, (2) the name of the corporation, (3) a

recital that permission to organize the corporation has been granted by resolution duly adopted by the governing body of the local political subdivision and the date of the adoption of the resolution, (4) the location of the registered office of the corporation, which shall be in the local political subdivision, and the name of its current registered agent at such office, (5) the purposes for which the corporation is organized, (6) the number of directors of the corporation, (7) the period, if any, of duration of the corporation, and (8) any other matter which the applicants choose to insert in the articles of incorporation which is not inconsistent with the Nebraska Industrial Development Corporation Act or with the laws of this state. The articles of incorporation shall be subscribed and acknowledged before a notary public by each of the applicants.

Source: Laws 1972, LB 1517, § 4; Laws 1995, LB 494, § 4; Laws 2008, LB379, § 21.
Effective date July 18, 2008.

ARTICLE 26
LIMITED LIABILITY COMPANIES

Section

21-2601.01 Terms, defined.

For purposes of the Limited Liability Company Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(3) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the limited liability company is organized to render.

Source: Laws 2006, LB 647, § 5; Laws 2008, LB379, § 22.
Effective date July 18, 2008.

21-2604 Name.

(1) The words limited liability company, ltd. liability company, or ltd. liability co., or the abbreviation L.L.C. or LLC, shall be the last words of the name of every limited liability company, and the limited liability company name may not:

(a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or

(b) Except as provided in subsection (2) of this section, be the same as or deceptively similar to the name of a limited liability company or corporation existing under the laws of this state or a foreign limited liability company or corporation authorized to transact business in this state or a name the exclusive right to which is reserved in any manner provided under the laws of this state.

(2) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other limited liability company or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction that establishes the applicant's right to use the name applied for in this state.

(3) Omission of the words or an abbreviation required by subsection (1) of this section in the use of the name of the limited liability company shall render any person who participates in the omission or who knowingly acquiesces in such omission liable for indebtedness, damage, or liability caused by the omission.

(4) Identification as a limited liability company in the manner required by subsection (1) of this section shall appear at the end of the name of the limited liability company on all correspondence, stationery, checks, invoices, and documents executed by the limited liability company.

Source: Laws 1993, LB 121, § 4; Laws 1997, LB 631, § 2; Laws 2008, LB907, § 3.
Effective date July 18, 2008.

21-2606 Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its current registered agent in this state. A post office box number may be provided in addition to the street address;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 6; Laws 1994, LB 884, § 28; Laws 1997, LB 631, § 4; Laws 2006, LB 647, § 7; Laws 2008, LB379, § 23. Effective date July 18, 2008.

21-2610 Change of registered office or registered agent.

(1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the address of its registered office is to be changed, the new address;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If its registered agent is to be changed, the name of the successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address or post office box number for his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

Source: Laws 1993, LB 121, § 10; Laws 1994, LB 884, § 29; Laws 1997, LB 631, § 6; Laws 2006, LB 647, § 9; Laws 2008, LB379, § 24.
Effective date July 18, 2008.

21-2611 Failure to maintain registered agent or registered office or pay annual fee.

If a limited liability company has failed for ninety days to appoint and maintain a registered agent in this state, has failed for ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A defunct limited liability company may at any time after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

Source: Laws 1993, LB 121, § 11; Laws 1994, LB 884, § 30; Laws 2008, LB907, § 4.
Effective date July 18, 2008.

21-2612 Liability of members, managers, and employees.

(1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Source: Laws 1993, LB 121, § 12; Laws 1994, LB 884, § 31; Laws 1997, LB 631, § 7; Laws 2005, LB 216, § 1; Laws 2008, LB914, § 1. Operative date July 18, 2008.

21-2632.01 Limited liability company; professional service; limitation of services.

A limited liability company which provides a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2006, LB 647, § 12; Laws 2008, LB379, § 25. Effective date July 18, 2008.

21-2638 Foreign limited liability company; certificate of authority; application.

Before doing business in this state, a foreign limited liability company shall obtain a certificate of authority from the Secretary of State. In order to obtain a certificate of authority, a foreign limited liability company shall submit to the Secretary of State, together with payment of the fee required by the Limited Liability Company Act, an original executed by a member or manager, together with a duplicate original, of an application for a certificate of authority as a foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company;

(2) The state or other jurisdiction or country where organized, the date of its organization, and a statement issued by an appropriate authority in that jurisdiction that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and street address of the current resident agent for service of process required to be maintained by the act. A post office box number may be provided in addition to the street address; and

(5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such foreign limited

liability company is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and taxes prescribed by the laws of this state.

Source: Laws 1993, LB 121, § 38; Laws 2008, LB379, § 26.
Effective date July 18, 2008.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

PART 1 - GENERAL PROVISIONS

PART 1 - GENERAL PROVISIONS

21-2901 Act, how cited.

Sections 21-2901 to 21-29,134 shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 1; Laws 2008, LB848, § 1.
Effective date July 18, 2008.

21-2903 Terms, defined.

For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights. The term does not include the amounts described in section 21-2983;

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a cooperative, a limited cooperative association, a general partnership, a limited

liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means a member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member or both in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

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

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Source: Laws 2007, LB368, § 3; Laws 2008, LB848, § 2.
Effective date July 18, 2008.

21-2910 Required information.

A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger or consolidation;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and

(10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Source: Laws 2007, LB368, § 10; Laws 2008, LB848, § 3.
Effective date July 18, 2008.

PART 2 - FILING AND REPORTS

21-2922 Certificate of good standing or authorization.

(1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of good standing for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Source: Laws 2007, LB368, § 22; Laws 2008, LB848, § 4.
Effective date July 18, 2008.

PART 4 - MEMBERS

21-2929 Members.

In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act, the Nonstock Cooperative Marketing Act, or sections 21-1301 to 21-1339.

Source: Laws 2007, LB368, § 29; Laws 2008, LB848, § 5.
Effective date July 18, 2008.

Cross References

Cooperative Corporations, see section 21-1301 et seq.
Cooperative farm land companies, see section 21-1333 et seq.
Nonstock Cooperative Marketing Act, see section 21-1401.

21-2930 Becoming a member.

A person becomes a member:

(1) As provided in the articles of organization and bylaws;

(2) As the result of merger or consolidation under section 21-29,122; or

(3) With the consent of all the members.

Source: Laws 2007, LB368, § 30; Laws 2008, LB848, § 6.
Effective date July 18, 2008.

21-2935 Special members' meetings.

(1) Special members' meetings shall be called:

(a) As provided in the articles of organization or bylaws;

(b) By a majority vote of the board of directors;

(c) By demand in a record signed by members holding at least twenty percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or

(d) By demand in a record signed by members holding at least twenty percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Source: Laws 2007, LB368, § 35; Laws 2008, LB848, § 7.
Effective date July 18, 2008.

21-2939 Voting by patron members; voting by investor members.

(1) Each patron member has one vote, but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If the articles of organization provide for investor members, each investor member has one vote, unless the articles of organization or bylaws otherwise provide. The articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

(3) If a limited cooperative association has both patron and investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote, but the articles of organization or bylaws may reduce the collective voting power of patron members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Source: Laws 2007, LB368, § 39; Laws 2008, LB848, § 8.
Effective date July 18, 2008.

PART 5 - MEMBER INTEREST

21-2945 Member interest.

A member's interest:

(1) Consists of: (a) Governance rights; (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Source: Laws 2007, LB368, § 45; Laws 2008, LB848, § 9.
Effective date July 18, 2008.

PART 6 - MARKETING CONTRACTS

21-2949 Marketing contract, defined; authority.

In this section and sections 21-2950 to 21-2952, marketing contract means a contract between a limited cooperative association and another person that need not be a patron member:

(1) Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the limited cooperative association or any facilities furnished by the association; or

(2) Authorizing the limited cooperative association to act for the person in any manner with respect to the products, commodities, or goods.

Source: Laws 2007, LB368, § 49; Laws 2008, LB848, § 10.
Effective date July 18, 2008.

21-2950 Marketing contract.

(1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title absolutely, except for security interests properly perfected, to the association upon delivery or at any other specific time expressly provided by the contract.

(2) A marketing contract may:

(a) Authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and

(b) Allow the limited cooperative association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

Source: Laws 2007, LB368, § 50; Laws 2008, LB848, § 11.
Effective date July 18, 2008.

21-2951 Duration of marketing contract; termination.

The initial duration of a marketing contract may not exceed ten years, but the contract may be made self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least ninety days before the end of the current term.

Source: Laws 2007, LB368, § 51; Laws 2008, LB848, § 12.
Effective date July 18, 2008.

21-2952 Remedies for breach or anticipating repudiation of contract.

(1) A marketing contract may liquidate damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of the marketing contract but only at an amount or at a formula that is reasonable in light of the actual or then anticipated harm caused by the breach or to be caused by the

anticipatory repudiation. The provision may be enforced as liquidated damages and is not to be considered a penalty.

(2) If there is a breach or anticipatory repudiation of a marketing contract, the limited cooperative association may seek an injunction to prevent the further breach or an anticipatory repudiation of the contract and the specific performance of the contract.

(3) In the case of a marketing contract between a limited cooperative association and a patron member, the articles of organization or bylaws may also provide additional remedies for the remedies under subsections (1) and (2) of this section.

(4) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Source: Laws 2007, LB368, § 52; Laws 2008, LB848, § 13.
Effective date July 18, 2008.

PART 7 - DIRECTORS AND OFFICERS

21-2953 Existence and powers of board of directors.

(1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors. The board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, and the Nebraska Limited Cooperative Association Act.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Source: Laws 2007, LB368, § 53; Laws 2008, LB848, § 14.
Effective date July 18, 2008.

21-2955 Qualifications of directors and composition of board.

(1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director may be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Source: Laws 2007, LB368, § 55; Laws 2008, LB848, § 15.
Effective date July 18, 2008.

21-2956 Election of directors.

(1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Source: Laws 2007, LB368, § 56; Laws 2008, LB848, § 16.
Effective date July 18, 2008.

21-2959 Removal of director.

Unless the articles of organization or bylaws otherwise provide, the following rules apply:

(1) Members may remove a director with or without cause;

(2) A member or members holding at least twenty-five percent of the total voting power entitled to be voted in the election of the director may demand removal of a director by a signed petition submitted to the officer of the limited cooperative association charged with keeping its records;

(3) Upon receipt of a petition for removal of a director, an officer or the board of directors shall:

(a) Call a special members' meeting to be held within ninety days after receipt of the petition by the association; and

(b) Mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal notice of the meeting which complies with section 21-2936;

(4) A director against whom a petition has been submitted shall be informed in a record of the petition within a reasonable time before the members' meeting at which the members consider the petition; and

(5) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Source: Laws 2007, LB368, § 59; Laws 2008, LB848, § 17.
Effective date July 18, 2008.

21-2960 Suspension of director by board.

(1) The board of directors may suspend a director, if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director;

(c) Intentional infliction of harm on the limited cooperative association; or

(d) Any other behavior, act, or omission as provided by the articles of organization or bylaws.

(2) A suspension under subsection (1) of this section is effective for thirty days unless the board of directors calls and gives notice of a special members' meeting for removal of the director before the end of the thirty-day period in which case the suspension is effective until adjournment of the special meeting or the director is removed.

(3) After suspension, a director may be removed pursuant to section 21-2959.

Source: Laws 2007, LB368, § 60; Laws 2008, LB848, § 18.
Effective date July 18, 2008.

21-2970 Standards of conduct and liability.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the limited cooperative association.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the limited cooperative association whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director or any failure to take any action if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 2007, LB368, § 70; Laws 2008, LB706, § 1.
Effective date February 8, 2008.

PART 9 - CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

21-2978 Forms of contribution and valuation.

(1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully met.

Source: Laws 2007, LB368, § 78; Laws 2008, LB848, § 19.
Effective date July 18, 2008.

21-2980 Allocation of profits and losses.

(1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

(2)(a) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(b) For purposes of this subsection, the following rules apply:

(i) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members; and

(ii) Amounts paid, due, or allocated to investor members as a stated, fixed return on equity are not considered amounts allocated to investor members.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Source: Laws 2007, LB368, § 80; Laws 2008, LB848, § 20.
Effective date July 18, 2008.

21-2981.01 Distributions to members; redemption or repurchase authorized; how treated.

Property distributed under subsection (2) of section 21-2981, other than cash, may be redeemed or repurchased as provided in the articles of organization or bylaws but no redemption or repurchase may be made without full and final authorization by the board of directors, which may be withheld for any reason in the board's sole discretion. The redemption or repurchase will be treated as a distribution under section 21-2981.

Source: Laws 2008, LB848, § 21.
Effective date July 18, 2008.

21-2981.02 Limit on distributions.

(1) A limited cooperative association shall not make a distribution if, after the distribution:

(a) The limited cooperative association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(b) The limited cooperative association's assets would be less than the sum of its total liabilities.

(2) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other methods that are reasonable in the circumstances.

(3) Except as otherwise provided in subsection (4) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one-hundred-twenty days after that date; or

(ii) The payment is made, if payment occurs more than one-hundred-twenty days after the distribution is authorized.

(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, distribution does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

Source: Laws 2008, LB848, § 22.
Effective date July 18, 2008.

21-2981.03 Prohibited distribution; director liability; member or holder of financial rights liability; actions authorized; statute of limitation.

(1) A director who consents to a distribution made in violation of section 21-2981 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with section 21-2970 or 21-2971.

(2) A member or holder of financial rights which received a distribution knowing that the distribution to the member or holder was made in violation of section 21-2981.02 is personally liable to the limited cooperative association but only to the extent that the distribution received by the member or holder exceeded the amount that could have been properly paid under section 21-2981.02.

(3) A director against whom an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other director that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that is liable under subsection (2) of this section and compel contribution from the person in the amount the person received as described in such subsection.

(4) An action under this section is barred if it is not commenced within two years after the distribution.

Source: Laws 2008, LB848, § 23.
Effective date July 18, 2008.

PART 10 - DISSOCIATION

21-2982 Member's dissociation; power of estate of member.

(1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger or consolidation, if, under the plan of merger or consolidation as approved under section 21-29,122, the person ceases to be a member.

Source: Laws 2007, LB368, § 82; Laws 2008, LB848, § 24.
Effective date July 18, 2008.

PART 11 - DISSOLUTION

21-2992 Other claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association shall publish notice of its dissolution and may request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office

is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Source: Laws 2007, LB368, § 92; Laws 2008, LB848, § 25.
Effective date July 18, 2008.

PART 14 - AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS

21-29,110 Authority to amend articles of organization or bylaws; rights of member.

(1) A limited cooperative association may amend its articles of organization or bylaws.

(2) Unless the articles of organization or bylaws provide otherwise, a member of a limited cooperative association does not have vested property rights resulting from any provision in the articles of organization or bylaws, including provisions relating to management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

Source: Laws 2007, LB368, § 110; Laws 2008, LB848, § 26.
Effective date July 18, 2008.

PART 15 - CONVERSION, MERGER, AND CONSOLIDATION

21-29,117 Merger and consolidation; terms, defined.

For purposes of sections 21-29,117 to 21-29,127:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger or consolidation;

(2) Constituent organization means an organization, other than a limited cooperative association, that is a party to a merger or consolidation;

(3) Governing statute of an organization means the statute that governs the organization's internal affairs;

(4) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, a cooperative, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

(5) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

(6) Surviving organization means an organization into which one or more other organizations are merged or consolidated. A surviving organization may exist before the merger or consolidation or be created by the merger or consolidation.

Source: Laws 2007, LB368, § 117; Laws 2008, LB848, § 27.
Effective date July 18, 2008.

21-29,118 Repealed. Laws 2008, LB 848, § 35.

21-29,119 Repealed. Laws 2008, LB 848, § 35.

21-29,120 Repealed. Laws 2008, LB 848, § 35.

21-29,121 Repealed. Laws 2008, LB 848, § 35.

21-29,122 Merger or consolidation.

(1) Any one or more limited cooperative associations may merge or consolidate with or into any one or more limited cooperative associations, limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations, and any one or more limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations may merge or consolidate with or into any one or more limited cooperative associations.

(2) A plan of merger or consolidation shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger or consolidation, a statement to that effect;

(c) The terms and conditions of the merger or consolidation, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger or consolidation, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger or consolidation, any amendments to be made by the merger or consolidation to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Source: Laws 2007, LB368, § 122; Laws 2008, LB848, § 28.
Effective date July 18, 2008.

21-29,123 Notice and action on plan of merger or consolidation by constituent limited cooperative association.

(1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger or consolidation shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger or consolidation;

(b) A recommendation that the members approve the plan of merger or consolidation unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that decision;

(d) Any condition of its submission of the plan of merger or consolidation to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 123; Laws 2008, LB848, § 29.
Effective date July 18, 2008.

21-29,124 Approval or abandonment of merger or consolidation by members of constituent limited cooperative association.

(1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger or consolidation shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger or consolidation is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or consolidation or abandon the planned merger or consolidation:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Source: Laws 2007, LB368, § 124; Laws 2008, LB848, § 30.
Effective date July 18, 2008.

21-29,125 Merger or consolidation with subsidiary.

(1) Unless the articles of organization or bylaws of the limited cooperative association or articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge or consolidate the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger or consolidation shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger or consolidation.

Source: Laws 2007, LB368, § 125; Laws 2008, LB848, § 31.
Effective date July 18, 2008.

21-29,126 Filings required for merger or consolidation; effective date.

(1) After each constituent organization has approved a merger or consolidation, articles of merger or consolidation shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger or consolidation shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger or consolidation, a statement to that effect;

(c) The date the merger or consolidation is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger or consolidation:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger or consolidation, any amendments provided for in the plan of merger or consolidation for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger or consolidation was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger or consolidation for filing in the office of the Secretary of State.

(4) A merger or consolidation becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of merger or consolidation; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Source: Laws 2007, LB368, § 126; Laws 2008, LB848, § 32.
Effective date July 18, 2008.

21-29,127 Effect of merger or consolidation.

When a merger or consolidation becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges or consolidates into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger or consolidation had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger or consolidation, the terms and conditions of the plan take effect;

(8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger or consolidation does not dissolve the limited cooperative association for purposes of section 21-2987;

(9) If the surviving organization is created by the merger or consolidation:

(a) If it is a limited cooperative association, the articles of organization become effective; or

(b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization exists before the merger or consolidation, any amendments provided for in the articles of merger or consolidation for the organizational document that created the organization become effective.

Source: Laws 2007, LB368, § 127; Laws 2008, LB848, § 33.
Effective date July 18, 2008.

21-29,128 Repealed. Laws 2008, LB 848, § 35.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

ARTICLE 1
GENERAL PROVISIONS

(c) COMMISSIONER SYSTEM

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than three hundred thousand inhabitants shall consist of three persons except as follows:

(1) The registered voters in any county containing not more than three hundred thousand inhabitants may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in section 32-567 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951, c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1.
Effective date July 18, 2008.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

23-149 Commissioners; number; petition to change; election; ballot; form.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question regarding the number of commissioners on the county board. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, the county clerk or election commissioner shall cause the question to be submitted to the voters of the county at such election and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: For three commissioners and for five commissioners; and the same shall be printed upon the regular ballots cast for officers voted for at such election and shall be counted and canvassed in the same manner.

(3) If a majority of votes cast at the election favor the proposition for five commissioners, thereafter the county shall have five commissioners, and if a majority of the ballots cast at the election favor the proposition for three commissioners, thereafter the county shall have three commissioners.

Source: Laws 1891, c. 21, § 1, p. 226; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 18, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-149; Laws 1969, c. 259, § 1, p. 958; Laws 1973, LB 75, § 1; Laws 1991, LB 789, § 5; Laws 2008, LB269, § 2.
Effective date July 18, 2008.

23-151 Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(1) Each county under commissioner organization having not more than three hundred thousand inhabitants shall be divided into (a) three districts numbered respectively, one, two, and three, (b) five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five, or (c) seven districts as provided for in sections 23-292 to 23-299 numbered respectively, one, two, three, four, five, six, and seven. Each county having more than three hundred thousand inhabitants shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years unless the county has a change in population requiring it to be redistricted pursuant to subdivision (3)(a) of this section or unless there is a vote to change from three to five districts as provided for in sections 23-148 and 23-149.

(3)(a) The establishment of district boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains a population of more than three hundred thousand inhabitants. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than three hundred thousand inhabitants shall be redrawn, if

necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632, § 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536; Laws 2008, LB268, § 1; Laws 2008, LB269, § 3.
Effective date July 18, 2008.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB268, section 1, with LB269, section 3, to reflect all amendments.

Cross References

Election Act, see section 32-101.

ARTICLE 2

COUNTIES UNDER TOWNSHIP ORGANIZATION

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section
23-202. Township organization; petition; election.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-283. Repealed. Laws 2008, LB 269, § 14.
23-287. Repealed. Laws 2008, LB 269, § 14.
23-290. Repealed. Laws 2008, LB 269, § 14.
23-291. Repealed. Laws 2008, LB 269, § 14.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292. Township organization; how discontinued.
23-293. Township organization; discontinuance; procedure.
23-294. Township organization; discontinuance; election; ballot; form.
23-295. Township organization; discontinuance; when effective.
23-296. Township organization; cessation; establishment of commissioner system.
23-297. Commissioner system creation; districts; elected members; how treated.
23-299. Township organization; cessation; town records; indebtedness and unexpended balances; how discharged.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-202 Township organization; petition; election.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question of township organization. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions. The questions on the ballot shall be respectively: For township organization, or Against 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. Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-283 Repealed. Laws 2008, LB 269, § 14.

23-287 Repealed. Laws 2008, LB 269, § 14.

23-290 Repealed. Laws 2008, LB 269, § 14.

23-291 Repealed. Laws 2008, LB 269, § 14.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292 Township organization; how discontinued.

Any county which has township organization shall discontinue the same whenever the majority of the registered voters of the county voting on the question of such discontinuance so decide in the manner provided in sections 23-293 to 23-295.

Source: Laws 1885, c. 43, § 1, p. 235; R.S.1913, § 1056; C.S.1922, § 958; C.S.1929, § 26-272; R.S.1943, § 23-292; Laws 2008, LB269, § 5. Effective date July 18, 2008.

23-293 Township organization; discontinuance; procedure.

(1) In counties under township organization, a registered voter may file a petition or petitions for submission of the question of the discontinuance of township organization to the registered voters of the county. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election. When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions.

(2) In counties under township organization, if a resolution supported by a majority of the county board is filed in the office of the county clerk or election commissioner for submission of the question of discontinuance of township organization to the registered voters of the county, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the resolution.

(3) A petition or county board resolution for discontinuance of township organization shall specify whether the county board of commissioners to be formed pursuant to section 23-151 will have five or seven members and that reorganization as a county board of commissioners will be effective at the expiration of the supervisors' terms of office in January of the third calendar year following the election to discontinue township organization.

Source: Laws 1885, c. 43, § 2, p. 236; Laws 1895, c. 29, § 1, p. 154; R.S.1913, § 1057; C.S.1922, § 959; C.S.1929, § 26-273; R.S. 1943, § 23-293; Laws 1973, LB 75, § 18; Laws 1985, LB 422, § 1; Laws 2008, LB269, § 6.
Effective date July 18, 2008.

23-294 Township organization; discontinuance; election; ballot; form.

(1) If the petition or county board resolution to discontinue township organization specifies a five-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For continuance of township organization; or For discontinuance of township organization and creation of a five-member county board of commissioners effective at the expiration of the supervisors' terms of office in January of the third calendar year following this election.

(2) If the petition or county board resolution to discontinue township organization specifies a seven-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For continuance of township organization; or For discontinuance of township organization and creation of a seven-member county board of commissioners effective at the expiration of the supervisors' terms of office in January of the third calendar year following this election.

(3) Elections shall be conducted regarding discontinuance of township organization as provided in the Election Act.

Source: Laws 1885, c. 43, § 3, p. 236; R.S.1913, § 1058; C.S.1922, § 960; C.S.1929, § 26-274; R.S.1943, § 23-294; Laws 2008, LB269, § 7.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

23-295 Township organization; discontinuance; when effective.

If a majority of the votes cast on the question are against the continuance of township organization, then such organization shall cease to exist effective at the expiration of the supervisors' terms of office in January of the third calendar year following such election.

Source: Laws 1885, c. 43, § 4, p. 236; R.S.1913, § 1059; C.S.1922, § 961; C.S.1929, § 26-275; R.S.1943, § 23-295; Laws 2008, LB269, § 8.
Effective date July 18, 2008.

23-296 Township organization; cessation; establishment of commissioner system.

When township organization ceases in any county as provided by sections 23-292 to 23-295, a commissioner system shall be established. The county board of commissioners shall have five or seven members as specified in the petition or county board resolution pursuant to section 23-293.

Source: Laws 1885, c. 43, § 5, p. 236; R.S.1913, § 1060; C.S.1922, § 962; C.S.1929, § 26-276; R.S.1943, § 23-296; Laws 1945, c. 42, § 2, p. 203; Laws 2008, LB269, § 9.
Effective date July 18, 2008.

23-297 Commissioner system creation; districts; elected members; how treated.

(1) If the voters vote for creation of a seven-member county board of commissioners, the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149 and the supervisors whose terms have not expired on the effective date of the reorganization prescribed in section 23-293 shall continue in office as commissioners for the remainder of their unexpired terms.

(2)(a) If the voters vote for creation of a five-member county board of commissioners, the county clerk, county treasurer, and county attorney shall meet on the first Saturday after the first Tuesday of January following such election and redistrict the county into five commissioner districts with substantially equal population. Such redistricting shall be completed within thirty days after such initial meeting and shall specify where necessary the newly established districts which the members will serve for the balance of the unexpired terms as designated in subdivision (b) of this subsection. The newly established districts will not be effective until the effective date of the reorganization prescribed in section 23-293 except for purposes of being nominated and elected for office from such districts.

(b)(i) If three members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, each such supervisor shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

(ii) If four members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, the three of such supervisors receiving the most votes at such election shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection, the fourth of such supervisors shall serve a term of two years as a supervisor, and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

Source: Laws 1885, c. 43, § 6, p. 237; R.S.1913, § 1061; C.S.1922, § 963; C.S.1929, § 26-277; R.S.1943, § 23-297; Laws 1945, c. 42, § 3, p. 203; Laws 1979, LB 331, § 7; Laws 2008, LB269, § 10.
Effective date July 18, 2008.

23-299 Township organization; cessation; town records; indebtedness and unexpended balances; how discharged.

When township organization is discontinued in any county, the town clerk in each town in such county, as soon as the county board of commissioners is qualified pursuant to section 23-297, shall deposit with the county clerk of the county all town records, papers, and documents pertaining to the affairs of such town and certify to the county clerk the amount of indebtedness of such town outstanding at the time of such discontinuance. The county board shall have full and complete power to settle all the unfinished business of the town as fully as might have been done by the town itself and to dispose of any and all property belonging to such town, the proceeds of which, after paying all indebtedness, shall be disposed of by the county board for the benefit of the taxable inhabitants thereof by such board crediting all unexpended balances of the town to the district road fund and in no other manner. The county board, at such time as provided by law, shall levy a tax upon the taxable property of such town to pay any unliquidated indebtedness it may have outstanding.

Source: Laws 1885, c. 43, § 8, p. 237; R.S.1913, § 1063; C.S.1922, § 965; C.S.1929, § 26-279; R.S.1943, § 23-299; Laws 1945, c. 42, § 5, p. 204; Laws 2008, LB269, § 11.
Effective date July 18, 2008.

ARTICLE 18

CORONER

Section
23-1825. Organ and tissue donations; legislative findings.
23-1826. Organ and tissue donations; terms, defined.
23-1827. Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.
23-1828. Organ and tissue donations; failure to complete preliminary investigation; effect.
23-1829. Organ and tissue donations; denial of recovery; written report required.
23-1830. Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body.
23-1831. Organ and tissue donations; report provided to coroner; contents.
23-1832. Organ and tissue donations; immunity from criminal liability.

23-1825 Organ and tissue donations; legislative findings.

The Legislature finds and declares that it is in the public interest to facilitate organ and tissue donations pursuant to the Uniform Anatomical Gift Act and thereby to increase the availability of organs and tissues for medical transplantation. To accomplish these purposes, the following constitutes the procedure to facilitate the recovery of organs and tissues from donors under the jurisdiction of a coroner within a time period compatible with the preservation of such organ or tissue for the purpose of transplantation.

Source: Laws 2008, LB246, § 1.
Effective date February 8, 2008.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

23-1826 Organ and tissue donations; terms, defined.

For purposes of sections 23-1825 to 23-1832:

(1) Coroner means a coroner or his or her designated representative;

(2) Decedent means an individual with respect to whom a determination of death has been made pursuant to section 71-7202;

(3) Donor means a decedent (a) who is a donor of all or part of his or her body pursuant to subsection (1) of section 71-4802 or (b) for whom an anatomical gift has been made pursuant to subsection (2) of section 71-4802; and

(4) Preliminary investigation means an inquiry into whether any organs or tissues are necessary to determine the proximate cause or means of death.

Source: Laws 2008, LB246, § 2.
Effective date February 8, 2008.

23-1827 Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.

(1) A coroner shall conduct a preliminary investigation of a decedent within the coroner's jurisdiction as soon as possible after notification by the hospital in which such decedent is located or the hospital to which such decedent is being transported. The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation.

(2) The preliminary investigation shall be completed within a time period that is compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(3) The coroner may request and shall have access to all necessary information including copies of medical records, laboratory test results, X-rays, and other diagnostic results. The information shall be provided as expeditiously as possible, through reasonable means, to permit the preliminary investigation to be completed within a time period compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(4) Upon completion of the preliminary investigation, the coroner shall release all organs or tissues which have been donated or may yet be donated pursuant to the Uniform Anatomical Gift Act except those that the coroner reasonably believes contain evidence of the proximate cause or means of death. If the coroner reasonably believes that a specific organ or tissue contains evidence of the proximate cause or means of death and the organ or tissue is otherwise subject to recovery as a donated organ or tissue pursuant to the Uniform Anatomical Gift Act, the coroner or his or her designee shall be present for the removal procedure (a) to make a final determination that allows the recovery of the organs and tissues to proceed, (b) to request a biopsy, or (c) to deny removal of such organ or tissue if the coroner determines such organ or tissue contains evidence of the proximate cause or means of death. After a preliminary investigation is completed under this section, all organs or tissues compatible for transplantation, except any organs or tissues for which the coroner has denied recovery, may be recovered pursuant to the Uniform Anatomical Gift Act.

Source: Laws 2008, LB246, § 3.
Effective date February 8, 2008.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

23-1828 Organ and tissue donations; failure to complete preliminary investigation; effect.

If the coroner, coroner's physician, or other physician designated by the coroner fails to complete the preliminary investigation required under section 23-1827, or if the coroner fails to designate the coroner's physician or another physician to conduct and complete the preliminary investigation, within a time period compatible with the preservation of the organs and tissues for the purpose of transplantation, or if the coroner declines to conduct the preliminary investigation, any organ or tissue that is compatible for transplantation may be recovered pursuant to the Uniform Anatomical Gift Act as though the donor was not within the coroner's jurisdiction.

Source: Laws 2008, LB246, § 4.
Effective date February 8, 2008.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

23-1829 Organ and tissue donations; denial of recovery; written report required.

If the coroner denies recovery of an organ or tissue, the coroner shall state in a written report the reasons such recovery was denied and provide the report within ten days to the federally designated organ procurement organization in Nebraska.

Source: Laws 2008, LB246, § 5.
Effective date February 8, 2008.

23-1830 Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body.

(1) If the coroner releases any organ or tissue for recovery, he or she may request that a blood sample, a sample of catheterized urine, a sample of bile if the liver is recovered for the purpose of transplantation, a biopsy specimen in fixative of the organ or tissue procured, and copies of any photographs, pictures, or other diagrams of the organ or tissue made at the time of recovery be delivered to the coroner.

(2) A coroner shall have access to medical records, pathology reports, and the body of the donor following the recovery of any organ or tissue allowed under section 23-1827 or 23-1828.

Source: Laws 2008, LB246, § 6.
Effective date February 8, 2008.

23-1831 Organ and tissue donations; report provided to coroner; contents.

Any physician or designated recovery personnel authorized by the federally designated organ procurement organization in Nebraska to recover any organ or tissue pursuant to section 23-1827 or 23-1828 shall provide to the coroner a report detailing the recovery of such organ or tissue and any known relationship to the proximate cause or means of death. If appropriate, such report shall include a biopsy or medically approved sample from the recovered organ or

tissue and the results of any diagnostic testing performed upon the recovered organ or tissue. Such report shall become part of the coroner's or coroner's physician's report.

Source: Laws 2008, LB246, § 7.
Effective date February 8, 2008.

23-1832 Organ and tissue donations; immunity from criminal liability.

Any coroner, coroner's designee, coroner's physician or his or her designee, facility at which an organ or tissue recovery took place pursuant to sections 23-1825 to 23-1832, authorized recovery personnel, or other person who acts in good faith in compliance with sections 23-1825 to 23-1832 shall be immune from criminal liability for recovery of any organ or tissue.

Source: Laws 2008, LB246, § 8.
Effective date February 8, 2008.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) Within the first thirty 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.
Operative date July 18, 2008.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(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.
Operative date July 18, 2008.

23-2310.05 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this section.

(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.
Operative date July 18, 2008.

23-2320 Employee; reemployment; status; how treated.

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6; Laws 2008, LB1147, § 4. Operative date July 18, 2008.

CHAPTER 29
CRIMINAL PROCEDURE

Article.
29. Definitions and General Rules of Procedure. 29-121.

ARTICLE 1

DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section
29-121. Leaving child at a hospital; no prosecution for crime; hospital; duty.

29-121 Leaving child at a hospital; no prosecution for crime; hospital; duty.

No person shall be prosecuted for any crime based solely upon the act of leaving a child thirty days old or younger in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.

Source: Laws 2008, LB157, § 1; Laws 2008, First Spec. Sess., LB1, § 1. Effective date November 22, 2008.

CHAPTER 44
INSURANCE

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ARTICLE 1

POWERS OF DEPARTMENT OF INSURANCE

Section
44-165. Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

44-165 Financial conglomerate; supervision on consolidated basis; director; powers; duties; application fee; violation; enforcement powers; administrative penalty; unfair trade practice; criminal penalty; appeal; expenses of supervision.

(1)(a) A financial conglomerate may submit to the jurisdiction of the Director of Insurance for supervision on a consolidated basis under this section. Supervision under this section shall be in addition to all statutory and regulatory requirements imposed on domestic insurers and shall be for the purpose of determining how the operations of the financial conglomerate impact insurance operations.

(b) For purposes of this section:

(i) Control has the same meaning as in section 44-2121; and

(ii) Financial conglomerate means either an insurance company domiciled in Nebraska or a person established under the laws of the United States, any state, or the District of Columbia which directly or indirectly controls an insurance company domiciled in Nebraska. Financial conglomerate includes the person applying for supervision under this section and all entities, whether insurance companies or otherwise, to the extent the entities are controlled by such person.

(2) The director may approve any application for supervision under this section that meets the requirements of this section and the rules and regulations adopted and promulgated under this section.

(3)(a) The director shall adopt and promulgate rules and regulations for supervision of a financial conglomerate, including all persons controlled by a financial conglomerate, that will permit the director to assess at the level of the financial conglomerate the financial situation of the financial conglomerate, including solvency, risk concentration, and intra-group transactions.

(b) Such rules and regulations shall require the financial conglomerate to:

(i) Have in place sufficient capital adequacy policies at the level of the financial conglomerate;

(ii) Report to the director at least annually any significant risk concentration at the level of the financial conglomerate;

(iii) Report to the director at least annually all significant intra-group transactions of regulated entities within a financial conglomerate. Such reporting shall be in addition to all reports required under any other provision of Chapter 44; and

(iv) Have in place at the level of the financial conglomerate adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

(c) In adopting and promulgating the rules and regulations, the director:

(i) Shall consider the rules and regulations that may be adopted by a member state of the European Union, the European Union, or any other country for the supervision of financial conglomerates;

(ii) Shall require the filing of such information as the director may determine;

(iii) Shall include standards and processes for effective qualitative group assessment, quantitative group assessment including capital adequacy, affiliate transaction, and risk concentration assessment, risks and internal capital assessments, disclosure requirements, and investigation and enforcement powers;

(iv) Shall state that supervision of financial conglomerates concerns how the operations of the financial conglomerate impact the insurance operations;

(v) Shall adopt an application fee in an amount not to exceed the amount necessary to recover the cost of review and analysis of the application; and

(vi) May verify information received under this section.

(4)(a) If it appears to the director that a financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, willfully violates this section or the rules and regulations adopted and promulgated under this section, the director may order the financial conglomerate to cease and desist immediately any such activity. After notice and hearing, the director may order the financial conglomerate to void any contracts between the financial conglomerate and any of its affiliates or among affiliates of the financial conglomerate and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(b) If it appears to the director that any financial conglomerate that submits to the jurisdiction of the director under this section, or any director, officer, employee, or agent thereof, has committed or is about to commit a violation of this section or the rules and regulations adopted and promulgated under this section, the director may apply to the district court of Lancaster County for an order enjoining such financial conglomerate, director, officer, employee, or agent from violating or continuing to violate this section or the rules and regulations adopted and promulgated under this section and for such other equitable relief as the nature of the case and the interest of the financial conglomerate's policyholders, creditors, or the public may require.

(c)(i) Any financial conglomerate that fails, without just cause, to provide information which may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of one hundred dollars for each day's delay not to exceed an aggregate penalty of ten thousand dollars. The director may reduce the penalty if the financial conglomerate demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the financial conglomerate.

(ii) Any financial conglomerate that fails to notify the director of any action for which such notification may be required under the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay an administrative penalty of not more than two thousand five hundred dollars per violation.

(iii) Any violation of this section or the rules and regulations adopted and promulgated under this section shall be an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

(d) Any director or officer of a financial conglomerate that submits to the jurisdiction of the director under this section who knowingly violates or assents to any officer or agent of the financial conglomerate to violate this section or the rules and regulations adopted and promulgated under this section may be required by the director, after notice and hearing, to pay in his or her individual capacity an administrative penalty of not more than five thousand dollars per violation. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(e) After notice and hearing, the director may terminate the supervision of any financial conglomerate under this section if it ceases to qualify as a financial conglomerate under this section or the rules and regulations adopted and promulgated under this section.

(f) If it appears to the director that any person has committed a violation of this section or the rules and regulations adopted and promulgated under this section which so impairs the financial condition of a domestic insurer that submits to the jurisdiction of the director under this section as to threaten insolvency or make the further transaction of business by such financial conglomerate hazardous to its policyholders or the public, the director may proceed as provided in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act to take possession of the property of such domestic insurer and to conduct the business thereof.

(g) If it appears to the director that any person that submits to the jurisdiction of the director under this section has committed a violation of this section or the rules and regulations adopted and promulgated under this section which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the director may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as the director finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

(h)(i) Any financial conglomerate that submits to the jurisdiction of the director under this section that willfully violates this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(ii) Any director, officer, employee, or agent of a financial conglomerate that submits to the jurisdiction of the director under this section who willfully violates this section or the rules and regulations adopted and promulgated under this section or who willfully and knowingly subscribes to or makes or causes to be made any false statements, false reports, or false filings with the intent to deceive the director in the performance of his or her duties under this section or the rules and regulations adopted and promulgated under this section shall be guilty of a Class IV felony.

(iii) Any person aggrieved by any act, determination, order, or other action of the director pursuant to this section or the rules and regulations adopted and promulgated under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(iv) Any person aggrieved by any failure of the director to act or make a determination required by this section or the rules and regulations adopted and promulgated under this section may petition the district court of Lancaster County for a writ in the nature of a mandamus or a peremptory mandamus directing the director to act or make such determination forthwith.

(i) The powers, remedies, procedures, and penalties governing financial conglomerates under this section shall be in addition to any other provisions provided by law.

(5)(a) The director may contract with such qualified persons as the director deems necessary to allow the director to perform any duties and responsibilities under this section.

(b) The reasonable expenses of supervision of a financial conglomerate under this section shall be fixed and determined by the director who shall collect the same from the supervised financial conglomerate. The financial conglomerate shall reimburse the amount upon presentation of a statement by the director. All money collected by the director for supervision of financial conglomerates pursuant to this section shall be remitted in accordance with section 44-116.

(c) All information, documents, and copies thereof obtained by or disclosed to the director pursuant to this section shall be held by the director in accordance with sections 44-154 and 44-2138.

Source: Laws 2008, LB855, § 50.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.
Insurers Supervision, Rehabilitation, and Liquidation Act, Nebraska, see section 44-4862.
Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section
44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge

of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2095.

Source: Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-319.07 Securities; exchange; withdrawal; approval of director; forfeiture for failure to comply.

(1) The depositing insurer or assessment association may, from time to time, exchange for the deposited securities, or any of them, other securities eligible for deposit if the aggregate value of such deposit will not thereby be reduced below the amount required by sections 44-319.01 to 44-319.13. Upon application of the depositing insurer or assessment association, the director may approve the withdrawal of securities which are in excess of the amount required by sections 44-319.01 to 44-319.13. Insurers and assessment associations may, upon an application approved by the director, withdraw all or any part of the securities so deposited upon good cause therefor being shown. Securities so withdrawn shall, except if withdrawn as the result of a merger, consolidation, or total reinsurance, be used to pay excess losses only and shall be restored within such time and under such conditions as the director may direct by order.

(2) If the depositing insurer or assessment association fails to comply with the requirements of subsection (1) of this section or the rules and regulations adopted and promulgated pursuant to section 44-319.11, such insurer or assessment association shall forfeit five hundred dollars for each such failure. The director shall collect and remit the forfeitures to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1955, c. 174, § 7, p. 500; Laws 2007, LB117, § 2.

44-320 Domestic company; officers and directors; borrowing and sales to company prohibited; exception.

(1) Except as provided in subsections (2) through (6) of this section, no director or officer of any domestic insurance company shall directly or indirectly receive any money or valuable consideration for negotiating any loan for the company or for selling or aiding in the sale of any property to or by the company and no such director or officer shall directly or indirectly borrow money from, purchase any property from, or sell any property to the company.

(2)(a) Nothing in this section shall prevent any domestic insurance company from making a loan to an officer of the company for the purchase of a principal residence or acquiring the principal residence of an officer in connection with the relocation of the officer's place of employment at the request of the company either during the course of employment or upon initial employment of such officer. Any loan permitted under this subsection shall be secured by a first trust deed or first mortgage and shall not exceed seventy-five percent of the market value of the property. Any acquisition permitted under this subsection shall not exceed the market value of the property.

(b) For purposes of this subsection, market value shall mean the market value of real estate as determined by a real property appraiser credentialed by the Real Property Appraiser Board.

(c) Any loan or acquisition permitted under this subsection shall be subject to (i) the approval of the domestic insurance company's board of directors or a delegated committee of the company and (ii) prior written approval of the Director of Insurance based upon written application by the company including full and fair disclosure of the terms of the transaction. Approval of such transaction by the Director of Insurance shall be presumed unless notice of disapproval is received by the applicant within thirty days of the filing of the application. Approval of such transaction may be denied if the director finds that it is not in the best interest of the company or that the terms of the transaction are not fair and reasonable to the company.

(3) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company an insurance policy or annuity contract if (a) the purchase is in the ordinary course of the company's business and subject to all of the requirements normally imposed by the company in the sale of such policies and contracts and (b) no discount granted to the director or officer in connection with the purchase is greater than discounts provided to other employees of the company in connection with the sale of similar policies and contracts.

(4) Nothing in this section shall prevent any director or officer of any domestic insurance company from purchasing from his or her company surplus personal property having a total purchase price not in excess of ten thousand dollars in any calendar year if the personal property is sold to the director or officer at not less than its fair market value.

(5) Nothing in this section shall prevent any director or officer of any domestic insurance company from selling to his or her company property of any type or nature having a total purchase price not in excess of ten thousand dollars in any calendar year if the sale is in the ordinary course of business of the director's or officer's business and if the property is sold to the company at not more than its fair market value.

(6) Except as otherwise provided in this section, if any director or officer of any domestic insurance company desires to borrow money from, purchase any property from, or sell any property to the company in excess of ten thousand dollars in any calendar year, the company shall file an application with the Director of Insurance requesting written approval to engage in such transaction. The application shall set out the names of all of the parties interested in the transaction and the respective percentage of interest of each party, a brief description of the nature of the transaction, and a full disclosure of all consideration given or received by the company in connection with such transaction. The application shall be a public record open to public inspection from the date of filing. If the transaction is not approved or disapproved by the director within thirty days from the date of filing, the transaction shall be deemed disapproved. In determining whether to approve or disapprove such transaction, the director shall consider the following factors:

(a)(i) The fact that the transaction has been disclosed or made known to the board of directors of the company or a delegated committee of the company which must authorize approval or ratify the transaction by a vote or consent sufficient for the purpose without counting the vote or consent of any interested director or officer; and

(ii) If applicable, the fact of such transaction has been disclosed or made known to the shareholders entitled to vote and they authorize approval or ratify such transaction by vote or written consent; or

(b)(i) The transaction is fair and reasonable to the company; and

(ii) The transaction is of a nature normally engaged in by the company and the consideration is fair and reasonable.

(7) The Director of Insurance may proceed in a court of competent jurisdiction against a domestic insurance company to reverse or hold invalid a transaction made in violation of subsection (6) of this section unless the transaction was approved pursuant to such subsection.

(8) In addition to other remedies and penalties available under the law of this state, each violation of this section shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 1913, c. 154, § 43, p. 417; R.S.1913, § 3179; Laws 1919, c. 190, tit. V, art. IV, § 14, p. 595; C.S.1922, § 7779; C.S.1929, § 44-314; R.S.1943, § 44-320; Laws 1953, c. 149, § 1(1), p. 477; Laws 1988, LB 713, § 1; Laws 1991, LB 237, § 59; Laws 1991, LB 234, § 1; Laws 2006, LB 778, § 4.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-349 Policy or contract; statement required.

No policy or contract of insurance or renewal thereof shall be made, issued, used, or delivered by any assessment insurer in this state unless it states on its face that it is issued by an assessment insurer.

Source: Laws 1913, c. 154, § 136, p. 466; R.S.1913, § 3273; Laws 1919, c. 190, tit. V, art. XI, § 1, p. 647; C.S.1922, § 7880; C.S.1929, § 44-1101; R.S.1943, § 44-349; Laws 1959, c. 201, § 1, p. 711; Laws 2008, LB855, § 3.
Operative date July 18, 2008.

44-356 Policies; violations; penalty.

(1) A violator of any of the provisions of section 44-353 shall be fined not more than one hundred dollars.

(2) A violation of any of the provisions of section 44-354 or 44-355 shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 1913, c. 154, § 71, p. 424; R.S.1913, § 3207; Laws 1919, c. 190, tit. V, art. IV, § 41, p. 603; C.S.1922, § 7806; C.S.1929, § 44-341; R.S.1943, § 44-356; Laws 1989, LB 92, § 103; Laws 2008, LB855, § 4.
Operative date July 18, 2008.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-371 Annuity contract; insurance proceeds and benefits; exempt from claims of creditors; exceptions.

(1)(a) Except as provided in subdivision (1)(b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (1)(a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) An insurance company shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

(2) Notwithstanding subsection (1) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprison-

ment or death. No insurance company shall be liable or responsible to any person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Source: Laws 1933, c. 73, § 1, p. 315; C.S.Supp.,1941, § 44-1130; R.S. 1943, § 44-371; Laws 1980, LB 940, § 4; Laws 1981, LB 327, § 1; Laws 1987, LB 335, § 1; Laws 1997, LB 47, § 1; Laws 2005, LB 465, § 3.

44-3,144 Health care coverage of children; terms, defined.

For purposes of sections 44-3,144 to 44-3,150:

(1) Authorized attorney has the same meaning as in section 43-512;

(2) Child means an individual to whom or on whose behalf a legal duty of support is owed by an obligor;

(3) Department means the Department of Health and Human Services;

(4) Employer means an individual, a firm, a partnership, a corporation, an association, a union, a political subdivision, a state agency, or any agent thereof who pays income to an obligor on a periodic basis and has or provides health care coverage to the obligor-employee;

(5) Health care coverage means a health benefit plan or combination of plans, other than public medical assistance programs, that provide medical care or benefits;

(6) Insurer means an insurer as defined in section 44-103 offering a group health plan as defined in 29 U.S.C. 1167, as such section existed on January 1, 2002;

(7) Medical support means the provision of health care coverage, contribution to the cost of health care coverage, contribution to expenses associated with the birth of a child, other uninsured medical expenses of a child, or any combination thereof;

(8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) National medical support notice means a uniform administrative notice issued by the county attorney, authorized attorney, or department to enforce the medical support provisions of a support order;

(10) Obligee has the same meaning as in section 43-3341;

(11) Obligor has the same meaning as in section 43-3341;

(12) Plan administrator means the person or entity that administers health care coverage for an employer;

(13) Qualified medical child support order means an order that meets the requirements of 29 U.S.C. 1169, as such section existed on January 1, 2002; and

(14) Uninsured medical expenses means the reasonable and necessary health-related expenses that are not paid by health care coverage.

Source: Laws 1994, LB 1224, § 72; Laws 1996, LB 1044, § 234; Laws 1997, LB 307, § 103; Laws 2002, LB 1062, § 6; Laws 2006, LB 1248, § 56.

Cross References

Medical Assistance Act, see section 68-901.

44-3,149 Health care coverage of children; insurer of obligor; duties.

An insurer shall, in any case in which a child has health care coverage through the insurer of the obligor:

(1) Provide such information to the obligor as may be necessary for the child to obtain benefits through such coverage;

(2) Permit the obligor or the provider, with the obligor's approval, to submit claims for covered services without the approval of the obligor; and

(3) Make payment on claims submitted in accordance with subdivision (2) of this section directly to such obligor, the provider, or the department pursuant to section 68-916.

Source: Laws 1994, LB 1224, § 77; Laws 2002, LB 1062, § 9; Laws 2006, LB 1248, § 57.

44-3,157 Mandated coverages or services; applicability.

If the laws of any other state specify that a policy issued for delivery in that state need not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, and if such a policy issued for delivery in that state does not provide the coverages or services mandated by that state to certificate holders who are not residents or not employed in that state, then the coverages or services mandated by sections 44-769 to 44-7,101 shall apply to a certificate issued to certificate holders who are residents of or employed in this state.

Source: Laws 2005, LB 119, § 38; Laws 2006, LB 875, § 1.

44-3,158 Workers' compensation insurance; assigned risk system; director; powers; certain actions of employer; effect.

(1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods; and

(b) Director means the Director of Insurance.

(2)(a) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(b) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(c) If the assigned risk system described in subdivisions (2)(a) and (b) of this section ceases to be viable because no qualified insurer is willing to provide workers' compensation coverage at an average rate level of two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 without also requiring substantial sharing of losses with all other workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act, then the director may, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers writing workers' compensation insurance in this state and such risk management pools. If established, such alternative assigned risk system shall not utilize an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) An employer shall not be considered to be in good faith entitled to be covered by workers' compensation insurance under this section if:

(a) The employer is required to establish a safety committee pursuant to sections 48-443 to 48-445 and is not in compliance with such sections;

(b) The employer is in default on workers' compensation premiums;

(c) The employer has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible;

(d) The employer has failed to provide an insurer reasonable access to books and records necessary for a premium audit;

(e) The employer has defrauded or attempted to defraud an insurer; or

(f) The employer is found to have been owned or controlled by persons who owned or controlled a prior employer that is or would be ineligible for coverage pursuant to subdivisions (4)(b) through (e) of this section.

Source: Laws 1971, LB 572, § 15; Laws 1986, LB 811, § 72; Laws 1993, LB 757, § 14; Laws 2000, LB 1119, § 39; Laws 2005, LB 119, § 42; R.S.Supp.,2006, § 48-146.01; Laws 2007, LB117, § 3.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

ARTICLE 4
INSURANCE RESERVES; POLICY PROVISIONS

Section

44-401 Domestic property and casualty insurance companies; valuation; reserves.

In ascertaining the condition of a domestic stock property or casualty insurance company, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. In ascertaining its liabilities, there shall be charged in addition to the capital stock, all outstanding claims, and a sum equal to one hundred percent of the unearned premiums on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.05 to 44-416.10, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy. In ascertaining the condition of a domestic mutual property or casualty insurance company, other than a company licensed solely to write the line of insurance specified in subdivision (4) of section 44-201, there shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of examination. In ascertaining its liabilities, there shall be charged all outstanding claims and a reserve in an amount equal to one hundred percent of the total unearned premium on all their policies in force. If the department finds this section to be impractical in ascertaining the condition of certain kinds of insurance companies, the department shall adopt and promulgate such rules and regulations as it deems proper, efficient, and consistent with law. Such rules and regulations shall give due regard to the statutes, rules, regulations, and established industry practices which may be used in other states or which are approved by the National Association of Insurance Commissioners.

Source: Laws 1913, c. 154, § 93, p. 437; R.S.1913, § 3230; Laws 1919, c. 190, tit. V, art. VI, § 1, p. 618; Laws 1921, c. 303, § 1, p. 960; C.S.1922, § 7829; Laws 1927, c. 141, § 1, p. 383; C.S.1929, § 44-501; R.S.1943, § 44-401; Laws 1949, c. 148, § 1, p. 374;

Laws 1951, c. 138, § 1, p. 570; Laws 1959, c. 204, § 1, p. 713; Laws 1981, LB 330, § 1; Laws 1985, LB 299, § 7; Laws 1989, LB 92, § 116; Laws 2000, LB 930, § 2; Laws 2005, LB 119, § 5.

44-402.01 Life insurance; reserves; separate accounts; establish; procedure.

Any domestic life insurance company, including, for the purposes of sections 44-402.01 to 44-402.05, all domestic fraternal benefit societies which operate on a legal reserve basis, may, after adoption of a resolution by its board of directors and certification thereof to the Director of Insurance, establish one or more separate accounts and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance and benefits incidental thereto, payable in fixed or variable amounts or both, and may, upon approval of the director, guarantee the value of the assets allocated to a separate account.

Source: Laws 1972, LB 771, § 1; Laws 1987, LB 17, § 9; Laws 2005, LB 119, § 6.

44-409 Domestic sickness and accident insurance companies; assets and liabilities.

In ascertaining the condition of a domestic sickness and accident insurance company, it shall be allowed as assets only such investments, cash, and accounts as are authorized by the laws of this state at the date of the examination. In ascertaining its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premium on the policies in force, after deducting credit for reinsurance authorized by sections 44-416.05 to 44-416.10, calculated on the gross sum without any deductions on any account, charged to the policyholder on each respective risk from the date of the issuance of the policy.

Source: Laws 1913, c. 154, § 96, p. 439; R.S.1913, § 3233; Laws 1919, c. 190, tit. V, art. VI, § 4, p. 619; C.S.1922, § 7832; C.S.1929, § 44-504; R.S.1943, § 44-409; Laws 1949, c. 149, § 1, p. 375; Laws 1965, c. 263, § 1, p. 747; Laws 1981, LB 330, § 2; Laws 1985, LB 299, § 8; Laws 2000, LB 930, § 3; Laws 2005, LB 119, § 7.

44-416 Repealed. Laws 2005, LB 119, § 44.

44-416.01 Repealed. Laws 2005, LB 119, § 44.

44-416.03 Repealed. Laws 2005, LB 119, § 44.

44-416.04 Repealed. Laws 2005, LB 119, § 44.

44-416.05 Reinsurance agreements; purpose of sections.

The purpose of sections 44-416.05 to 44-416.10 is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature hereby provides a mandate that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with

such sections, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature declares that the matters contained in such sections are fundamental to the business of insurance in accordance with 15 U.S.C. 1011 and 1012.

Source: Laws 2005, LB 119, § 30.

44-416.06 Credit for reinsurance; when allowed.

(1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6) of this section. Except as otherwise provided in section 44-224.11, credit shall be allowed under subsection (2), (3), or (4) of this section only for cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (4) or (5) of this section only if the applicable requirements of subsection (7) of this section have been satisfied.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state.

(3)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

(i) Files with the Director of Insurance evidence of its submission to this state's jurisdiction;

(ii) Submits to this state's authority to examine its books and records;

(iii) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

(iv) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

(B) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director.

(b) Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing.

(4)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien

assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:

(i) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(ii) Submits to the authority of this state to examine its books and records.

(b) The requirement of subdivision (4)(a)(i) of this section does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5)(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director and bear the expense of examination.

(b)(i) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(A) The commissioner of the state where the trust is domiciled; or

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(c) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars; and

(ii)(A) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of sections 44-416.05 to 44-416.10, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(C) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4), or (5) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(8) If the assuming insurer does not meet the requirements of subsection (2), (3), or (4) of this section, the credit permitted by subsection (5) of this section

shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (5)(c) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state insurance commissioner with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the state insurance commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state insurance commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

Source: Laws 2005, LB 119, § 31.

44-416.07 Asset or reduction from liability for reinsurance; limitations; security required.

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 44-416.06 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

(2) Securities approved by the Director of Insurance. The director may use the list of securities furnished by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3)(a) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of

issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

Source: Laws 2005, LB 119, § 32.

44-416.08 Qualified United States financial institution, defined.

(1) For purposes of subdivision (3) of section 44-416.07, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the Director of Insurance or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) For purposes of those provisions of sections 44-416.05 to 44-416.10 specifying those institutions that are eligible to act as a fiduciary of a trust, qualified United States financial institution means an institution that:

(a) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

Source: Laws 2005, LB 119, § 33.

44-416.09 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out sections 44-416.05 to 44-416.10.

Source: Laws 2005, LB 119, § 34.

44-416.10 Applicability of sections.

Sections 44-416.05 to 44-416.10 apply to all cessions after September 4, 2005, under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after September 4, 2005.

Source: Laws 2005, LB 119, § 35.

44-417 Credit for reinsurance; conditions.

No credits specified in sections 44-416.05 to 44-416.10 shall be made or allowed as an admitted asset or deduction from liability to any ceding insurer for reinsurance unless the contract of reinsurance provides in substance that, in the event of the insolvency of the ceding insurer, the portion of any risk or obligation assumed by the reinsurer, when such portion is ascertained, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because

of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except (1) when the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer or (2) when the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. The reinsurance agreement may provide that the domiciliary liquidator, receiver, or legal successor of an insolvent ceding insurer shall give written notice of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured, within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding in which such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator, receiver, or legal successor. The expense thus incurred by the assuming insurer may be filed as a claim against the insolvent ceding insurer as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

When two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned subject to court approval, in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Source: Laws 1951, c. 131, § 2, p. 552; Laws 1985, LB 299, § 9; Laws 1991, LB 236, § 43; Laws 2001, LB 360, § 1; Laws 2005, LB 119, § 8.

ARTICLE 5
STANDARD PROVISIONS AND FORMS

Section
44-501. Fire insurance policies; form; contents.
44-507. Foreign and domestic companies; policies; contents; reciprocity.
44-508. Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity.
44-514. Automobile liability policy; terms, defined.
44-522. Policies; cancellation requirements.
44-526. Health claim form; terms, defined.
44-531. Reduction or elimination of coverage; restrictive condition; notice required; right of parties to amend contract.

44-501 Fire insurance policies; form; contents.

No policy or contract of fire and lightning insurance, including a renewal thereof, shall be made, issued, used, or delivered by any insurer or by any insurance producer or representative of an insurer on property within this state other than such as shall conform as nearly as practicable to blanks, size of type, context, provisions, agreements, and conditions with the 1943 Standard Fire Insurance Policy of the State of New York, a copy of which shall be filed in the office of the Director of Insurance as standard policy for this state, and no other or different provision, agreement, condition, or clause shall in any manner be

made a part of such contract or policy or be endorsed thereon or delivered therewith except as provided in subdivisions (1) through (11) of this section.

(1) The name of the company, its location and place of business, the date of its incorporation or organization, the state or country under which such company is organized, the amount of paid-up capital stock, whether it is a stock, mutual, reciprocal, or assessment company, the names of its officers, the number and date of the policy, and appropriate company emblems may be printed on policies issued on property in this state. Any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

In lieu of the facsimile signatures of the president and secretary of the insurer on such policy, there may appear the signature or signatures of such persons as are duly authorized by the insurer to execute the contract. No such policy shall be void if the facsimile signature or signatures of any officer of the company shall not correspond with the actual persons who are such officers at the inception of the contract if such policy is countersigned by a duly authorized agent of the insurer.

(2) Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of supplemental contracts, contracts, or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which insurer is empowered to assume, may be used in connection with the standard policy. Such forms of contracts, supplemental contracts, or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged for convenience in the preparation of individual contracts and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon and such other data as may be included for duplication on daily reports for office records.

(3) A company, corporation, or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the Director of Insurance, if the same is not already included in the standard form as filed in the office of the Department of Insurance, print on its policies any provision which it is required by law to insert therein if the provision is not in conflict with the laws of this state or the United States or with the provisions of the standard form provided for in this section, but such provision shall be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: Provisions required by law to be stated in this policy, and be a part of the policy.

(4) There may be endorsed on the outside of any policy provided for in this section for the name, with the words insurance producer and place of business, of any insurance producer, either by writing, printing, stamping, or otherwise. There may also be added, with the approval of the Director of Insurance, a

statement of the group of companies with which the company is financially affiliated and the usual company medallion.

(5) When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the headline of each policy the fact of the severalty of the contract and also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. In the printed conditions of such policy, the necessary change may be made from the singular to plural number when reference is made to the companies issuing such policy.

(6) This section shall not apply to motor vehicle, inland marine, or ocean marine insurance, reinsurance contracts between insurance companies, or insurance that does not cover risks of a personal nature. An insurer may file with the director, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy which includes coverage against the peril of fire and substantial coverage against other perils without complying with the provisions of this section if such policy with respect to the peril of fire includes provisions which are the substantial equivalent of the minimum provisions of the standard policy provided for in this section and if the policy is complete as to all its terms without reference to any other document.

(7) If the policy is made by a mutual assessment or other company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon or attached or appended thereto.

(8) Assessment associations may issue policies with such modifications as shall be filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act.

(9) Any other coverage which a company is authorized to write under the laws of this state may be written in combination with a fire insurance policy.

(10) The policy shall provide that claims involving total loss situations shall be paid in accordance with section 44-501.02.

(11) Notwithstanding any other provision of this section, an insurer may file, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy with variations in terms and conditions from the standard policy provided for in this section.

Source: Laws 1913, c. 154, § 100, p. 444; R.S.1913, § 3237; Laws 1919, c. 190, tit. V, art. VII, § 1, p. 625; C.S.1922, § 7836; C.S.1929, § 44-601; R.S.1943, § 44-501; Laws 1951, c. 139, § 1, p. 572; Laws 1959, c. 207, § 1, p. 724; Laws 1973, LB 51, § 1; Laws 1989, LB 92, § 119; Laws 2003, LB 216, § 5; Laws 2007, LB117, § 4.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-507 Foreign and domestic companies; policies; contents; reciprocity.

The policies of any insurance company not organized under the laws of this state may, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain any provisions which the law of the state, territory, district, or country under which the company is organized

prescribes shall be in such policies when issued in this state, and the policies of any insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district, or country, contain any provision required by the laws of the state, territory, district, or country in which such policies are issued, the provisions of sections 44-501 to 44-510 to the contrary notwithstanding.

Source: Laws 1913, c. 154, § 106, p. 453; R.S.1913, § 3243; Laws 1919, c. 190, tit. V, art. VII, § 7, p. 634; C.S.1922, § 7842; Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; R.S.1943, § 44-507; Laws 2007, LB117, § 5.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-508 Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity.

The policies or contracts of insurance covering legal liability for injury to a person or persons caused by the ownership, operation, use, or maintenance of an automobile issued by any domestic or foreign company shall, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain a provision that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and, in case of such insolvency or bankruptcy, an action may be maintained within the terms and limits of the policy by the injured person or his or her heirs against the insurer.

Source: Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; R.S.1943, § 44-508; Laws 2007, LB117, § 6.

Cross References

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-514 Automobile liability policy; terms, defined.

For purposes of sections 44-514 to 44-521, unless the context otherwise requires:

(1) Policy shall mean an automobile liability policy providing all or part of the coverage defined in subdivision (2) of this section, delivered or issued for delivery in this state, insuring a natural person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles designated in the policy are of the following types only: (a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others; or (b) any other four-wheel motor vehicle of the pickup, panel, or delivery type which is not used in the occupation, profession, or business of the insured, except that sections 44-514 to 44-521 shall not apply (i) to any policy issued under an automobile assigned risk plan; (ii) to any policy subject to section 44-523; (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; or (iv) to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle

on the premises of such insured or on the way immediately adjoining such premises;

(2) Automobile liability coverage shall include only coverage of bodily injury and property damage liability, medical payments, uninsured motorist coverage, and underinsured motorist coverage;

(3) Renewal or to renew shall mean the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, except that (a) any policy with a policy period or term of less than six months shall be considered as if written for a policy period or term of six months and (b) any policy written for a term longer than one year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving twenty days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of sections 44-514 to 44-521; and

(4) Nonpayment of premium shall mean failure of the named insured to discharge when due any of his or her obligations in connection with the payment of any premium on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

Source: Laws 1972, LB 1396, § 1; Laws 1989, LB 92, § 124; Laws 2007, LB115, § 1.

44-522 Policies; cancellation requirements.

(1) No insurer may file an insurance policy with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

(a) Nonpayment of premium;

(b) The policy was obtained through a material misrepresentation;

(c) Any insured has submitted a fraudulent claim;

(d) Any insured has violated any of the terms and conditions of the policy;

(e) The risk originally accepted has substantially increased;

(f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

(4) Notice of cancellation or nonrenewal shall be sent by registered, certified, or first-class mail to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(6) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile insurance coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.

(7) All policy forms issued for delivery in Nebraska shall conform to this section.

Source: Laws 1913, c. 154, § 72, p. 424; R.S.1913, § 3208; Laws 1919, c. 190, tit. V, art. IV, § 42, p. 604; C.S.1922, § 7807; C.S.1929, § 44-342; R.S.1943, § 44-379; Laws 1955, c. 176, § 1, p. 505; Laws 1986, LB 1184, § 1; R.S.1943, (1988), § 44-379; Laws 1989, LB 92, § 126; Laws 1991, LB 233, § 45; Laws 1999, LB 326, § 3; Laws 2000, LB 1119, § 37; Laws 2001, LB 360, § 5; Laws 2007, LB117, § 7.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.
Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-526 Health claim form; terms, defined.

For purposes of the Standardized Health Claim Form Act:

(1) Ambulatory surgical facility shall mean a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization and which is licensed as a health clinic as defined by section 71-416 but shall not include the offices of private physicians or dentists whether for individual or group practice;

(2) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease or injury or congenital or degenerative condition;

(3) Health care practitioner shall mean an individual or group of individuals in the form of a partnership, limited liability company, or corporation licensed, certified, or otherwise authorized or permitted by law to administer health care in the course of professional practice and shall include the health care professions and occupations which are regulated in the Uniform Credentialing Act;

(4) Hospital shall mean a hospital as defined by section 71-419 except state hospitals administered by the Department of Health and Human Services;

(5) Institutional care providers shall mean all facilities licensed or otherwise authorized or permitted by law to administer health care in the ordinary course of business and shall include all health care facilities defined in the Health Care Facility Licensure Act;

(6) Issuer shall mean an insurance company, fraternal benefit society, health maintenance organization, third-party administrator, or other entity reimbursing the costs of health care expenses;

(7) Medicaid shall mean the medical assistance program pursuant to the Medical Assistance Act;

(8) Medicare shall mean Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., as amended; and

(9) Uniform claim form shall mean the claim forms and electronic transfer procedures developed pursuant to section 44-527.

Source: Laws 1994, LB 1222, § 54; Laws 1996, LB 1044, § 235; Laws 2000, LB 819, § 68; Laws 2006, LB 1248, § 58; Laws 2007, LB463, § 1134.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Medical Assistance Act, see section 68-901.
Uniform Credentialing Act, see section 38-101.

44-531 Reduction or elimination of coverage; restrictive condition; notice required; right of parties to amend contract.

(1) If an insurer reduces or eliminates any coverage in or introduces a more restrictive condition as part of a policy in force delivered or issued for delivery in this state and subject to sections 44-514 to 44-521 or section 44-522 or 44-523 prior to renewal of the policy and other than at the request of the named insured or as required by law, the insurer shall send to the named insured a notice explaining clearly what coverage has been reduced or eliminated or what condition has been restricted. The notice may be in a printed or electronic form if the named insured requested the electronic form and there was an agreement to that effect with the insurer prior to such request. If the named insured does not receive the notice, the reduction or elimination of coverage or restrictive condition shall not become part of the policy. It shall be a rebuttable presumption that all insureds received the notice if it was sent by email or first-class mail to the named insured's last-known email address or mailing address contained in the policy.

(2) Notice of any reduction or elimination of coverage or restrictive condition as part of a policy in force delivered or issued for delivery in this state and

subject to sections 44-514 to 44-521 or section 44-522 or 44-523 and other than at the request of the named insured or as required by law shall be sent to each agency that holds an agency contract with the insurer prior to the introduction into the marketplace of a policy containing the reduction or elimination of coverage or restrictive condition.

(3) Nothing in this section shall restrict the right of the parties to an insurance contract to amend the contract, during the policy term but not during the renewal process, pursuant to an endorsement attached to the policy if requested by a named insured under the policy. An endorsement attached to a policy pursuant to this subsection requires no further notice beyond such endorsement.

Source: Laws 2008, LB1045, § 1.
Effective date July 18, 2008.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section

44-771 Hospital, defined.

Hospital shall mean an institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419.

Source: Laws 1980, LB 646, § 3; Laws 1996, LB 1044, § 236; Laws 2000, LB 819, § 69; Laws 2007, LB296, § 173.

44-772 Substance abuse treatment center, defined.

Substance abuse treatment center shall mean an institution licensed as a substance abuse treatment center by the Department of Health and Human Services and defined in section 71-430, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Source: Laws 1980, LB 646, § 4; Laws 1985, LB 209, § 1; Laws 1985, LB 253, § 1; Laws 1996, LB 1044, § 237; Laws 1996, LB 1155, § 17; Laws 2000, LB 819, § 70; Laws 2007, LB296, § 174.

44-773 Outpatient program, defined.

Outpatient program shall refer to a program which is licensed or certified by the Department of Health and Human Services or the Division of Behavioral Health of the Department of Health and Human Services to provide specified services to persons suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 5; Laws 1995, LB 275, § 3; Laws 1996, LB 1044, § 238; Laws 1996, LB 1155, § 18; Laws 2004, LB 1083, § 96; Laws 2007, LB296, § 175.

44-774 Certified, defined.

Certified shall mean approved by the Division of Behavioral Health of the Department of Health and Human Services to render specific types or levels of care to the person suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 6; Laws 1995, LB 275, § 4; Laws 1996, LB 1044, § 239; Laws 2004, LB 1083, § 97; Laws 2007, LB296, § 176.

44-782 Health insurance provider; coverage of mental or nervous disorders; requirements.

No insurance company, health maintenance organization, or other health insurance provider shall deny payment for treatment of mental or nervous disorders under a policy, contract, certificate, or other evidence of coverage issued or delivered in Nebraska on the basis that the hospital or state institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419 providing such treatment is publicly funded and charges are reduced or no fee is charged depending on the patient's ability to pay.

Source: Laws 1985, LB 487, § 1; Laws 1989, LB 92, § 162; Laws 1996, LB 1044, § 240; Laws 2000, LB 819, § 71; Laws 2007, LB296, § 177.

44-784 Coverage for childhood immunizations; requirements.

Notwithstanding section 44-3,131, any expense-incurred group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed after January 1, 1995, or any expense-incurred individual sickness and accident insurance policy, certificate, or subscriber contract delivered or issued for delivery after such date that provides coverage for a dependent child under six years of age shall provide coverage for childhood immunizations. Benefits for childhood immunizations shall be exempt from any deductible provision contained in the applicable policy. Copayment, coinsurance, and dollar-limit provisions applicable to other medical services may be applied to the childhood immunization benefits. This section shall not apply to any individual or group policies that provide coverage for a specified disease, accident-only coverage, hospital indemnity coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage.

For purposes of this section, childhood immunizations shall mean the complete set of vaccinations for children from birth to six years of age for immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and haemophilus influenzae type B.

Source: Laws 1994, LB 1222, § 46; Laws 2007, LB63, § 1.

44-789 Coverage for bone or joint treatment; requirements.

Notwithstanding section 44-3,131, no group policy of accident or health insurance, health services plan, or health maintenance organization subscription shall be offered for sale in this state on or after January 1, 2009, unless such policy, plan, subscription, or contract which specifically provides coverage for surgical and nonsurgical treatment involving a bone or joint of the skeletal structure includes the option to provide coverage, for an additional premium and subject to the insurer's standard of insurability, for the reasonable and necessary medical treatment of temporomandibular joint disorder and craniomandibular disorder. The purchaser of the group policy of accident or health insurance, health services plan, or health maintenance organization subscription shall accept or reject the coverage in writing on the application or an amendment thereto for the master group policy of accident or health insurance, health services plan, or health maintenance organization subscription. Benefits may be subject to the same preexisting conditions, limitations, deductibles, copayments, and coinsurance that generally apply to any other sickness. The maximum lifetime benefits for temporomandibular joint disorder and craniomandibular disorder treatment shall be no less than two thousand five hundred dollars. Nothing in this section shall prevent an insurer from including such coverage for temporomandibular joint disorder and craniomandibular disorder as part of a policy's basic coverage instead of offering optional coverage.

Source: Laws 1998, LB 1162, § 82; Laws 2008, LB855, § 5.
Operative date January 1, 2009.

44-792 Mental health conditions; terms, defined.

For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies 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. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Source: Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

44-793 Mental health conditions; coverage; requirements.

(1) On or after January 1, 2000, notwithstanding section 44-3,131, any health insurance plan delivered, issued, or renewed in this state (a) if coverage is provided for treatment of mental health conditions other than alcohol or substance abuse, (i) shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition and (ii) if an out-of-pocket limit is established for physical health conditions, shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions, or (b) if no coverage is to be provided for treatment of mental health conditions, shall provide clear and prominent notice of such noncoverage in the plan.

(2) If a health insurance plan provides coverage for serious mental illness, the health insurance plan shall cover health care rendered for treatment of serious mental illness (a) by a mental health professional, (b) by a person authorized by the rules and regulations of the Department of Health and Human Services to provide treatment for mental illness, (c) in a mental health center as defined in section 71-423, or (d) in any other health care facility licensed under the Health Care Facility Licensure Act that provides a program for the treatment of a mental health condition pursuant to a written plan. The issuer of a health insurance plan may require a health care provider under this subsection to enter into a contract as a condition of providing benefits.

(3) The Director of Insurance may disapprove any plan that the director determines to be inconsistent with the purposes of this section.

Source: Laws 1999, LB 355, § 3; Laws 2000, LB 819, § 72; Laws 2007, LB296, § 178.

Cross References

Health Care Facility Licensure Act, see section 71-401.

44-797 Coverage for breast reconstruction; requirements; exceptions.

(1)(a) Any individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for all stages of reconstruction of the breast on which the mastectomy has been performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and physical complications of mastectomy, including lymphedemas in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) Each individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract shall provide notice to each policyholder and certificate holder of the coverage required by this section. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer. For group policies, such notice shall be sent to the policyholder or certificate holder by the plan or to the participant or beneficiary by the issuer. For individual policies, such notice shall be sent to the policyholder by the issuer no later than December 31, 2006.

(2) No individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract may deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section, or penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide monetary or other incentives to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section. Nothing in this section shall be construed to prohibit normal underwriting.

(3) Nothing in this section shall be construed to prevent an individual or group sickness and accident insurance policy, subscriber contract, or group health maintenance organization contract offering health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(4) The provisions of this section shall not apply to any individual or group policy or certificate which provides:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for onsite medical clinics;

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(i) Limited-scope dental or vision benefits;

(j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(k) Such other similar, limited benefits as are specified in federal regulations;

(l) Coverage only for a specified disease or illness;

(m) Hospital indemnity or other fixed indemnity insurance;

(n) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act, as such section existed on January 1, 2005;

(o) Coverage supplemental to the coverage provided under 10 U.S.C. chapter 55, as such chapter existed on January 1, 2005; and

(p) Similar supplemental coverage provided to coverage under a group health plan.

Source: Laws 2000, LB 930, § 4; Laws 2005, LB 119, § 9.

44-7,102 Coverage for screening for colorectal cancer.

(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 short-term major medical policies of six months or less duration and 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 shall include screening coverage for a colorectal cancer examination and laboratory tests for cancer for any nonsymptomatic person fifty years of age and older covered under such policy, certificate, contract, or plan. Such screening coverage shall include a maximum of one screening fecal occult blood test annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. The screenings selected shall be as deemed appropriate by a health care provider and the patient.

(2) This section does not prevent application of deductible or copayment provisions contained in the policy, certificate, contract, or employee benefit plan or require that such coverage be extended to any other procedures.

Source: Laws 2007, LB247, § 86.

ARTICLE 10

FRATERNAL INSURANCE

Section
44-1089. Benefits; exempt from claims of creditors; exceptions.

44-1089 Benefits; exempt from claims of creditors; exceptions.

(1) No noninsurance benefit, charity, relief, or aid to be paid, provided, or rendered by any society shall be liable to attachment, garnishment, or other

process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

(2)(a) Except as provided in subdivision (2)(b) of this section, all proceeds, cash values, and benefits accruing under any annuity contract, under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured, or under any accident or health insurance policy shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors of the insured and of the beneficiary if related to the insured by blood or marriage, unless a written assignment to the contrary has been obtained by the claimant.

(b) Subdivision (2)(a) of this section shall not apply to:

(i) An individual's aggregate interests greater than one hundred thousand dollars in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual; and

(ii) An individual's interest in all loan values or cash values of all matured or unmatured life insurance contracts and in all proceeds, cash values, or benefits accruing under all annuity contracts owned by such individual, to the extent that the loan values or cash values of any matured or unmatured life insurance contract or the proceeds, cash values, or benefits accruing under any annuity contract were established or increased through contributions, premiums, or any other payments made within three years prior to bankruptcy or within three years prior to entry against the individual of a money judgment which thereafter becomes final.

(c) A fraternal benefit society shall not be liable or responsible to any person to determine or ascertain the existence or identity of any such creditors prior to payment of any such loan values, cash values, proceeds, or benefits.

(3) Notwithstanding subsection (2) of this section, proceeds, cash values, and benefits accruing under any annuity contract or under any policy or certificate of life insurance payable upon the death of the insured to a beneficiary other than the estate of the insured shall not be exempt from attachment, garnishment, or other legal or equitable process by a judgment creditor of the beneficiary if the judgment against the beneficiary was based on, arose from, or was related to an act, transaction, or course of conduct for which the beneficiary has been convicted by any court of a crime punishable only by life imprisonment or death. No fraternal benefit society shall be liable or responsible to any person to determine or ascertain the existence or identity of any such judgment creditor prior to payment of any such proceeds, cash values, or benefits. This subsection shall apply to any judgment rendered on or after January 1, 1995, irrespective of when the criminal conviction is or was rendered and irrespective of whether proceedings for attachment, garnishment, or other legal or equitable process were pending on March 14, 1997.

Source: Laws 1985, LB 508, § 18; Laws 1987, LB 335, § 2; Laws 1997, LB 47, § 2; Laws 2005, LB 465, § 4.

ARTICLE 11
VIATICAL SETTLEMENTS ACT

44-1101 Act, how cited.

Sections 44-1101 to 44-1117 shall be known and may be cited as the Viatical Settlements Act.

Source: Laws 2001, LB 52, § 27; Laws 2008, LB853, § 1.
Effective date July 18, 2008.

44-1102 Terms, defined.

For purposes of the Viatical Settlements Act:

(1) Advertising means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract;

(2) Business of viatical settlements means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any manner acquiring an interest in a life insurance policy by means of a viatical settlement contract;

(3) Chronically ill means (a) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence; (b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (c) having a level of disability similar to that described in subdivision (3)(a) of this section as determined by the Department of Health and Human Services;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Financing entity means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and (b) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. Financing entity does not include a nonaccredited investor or viatical settlement purchaser;

(7) Fraudulent viatical settlement act means:

(a) An act or omission committed by any person who, knowingly and with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits his or her employees or agents to commit, any of the following acts:

(i) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a viatical settlement contract or insurance policy;

(B) The underwriting of a viatical settlement contract or insurance policy;

(C) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(D) Premiums paid on an insurance policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;

(F) The reinstatement or conversion of an insurance policy;

(G) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

(H) The issuance of written evidence of a viatical settlement contract or insurance; or

(I) A financing transaction; or

(ii) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;

(b) In the furtherance of a fraud or to prevent the detection of a fraud:

(i) Removing, concealing, altering, destroying, or sequestering from the director the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

(iii) Transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(iv) Filing with the director or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the director;

(c) Presenting, causing to be presented, or preparing with the knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured, owner, or any agent thereof;

(d) Embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;

(e) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, if the person or persons intended to defraud the policy's issuer, the viatical settlement provider, or the viator. Recklessly means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks and such disregard involves a gross deviation from acceptable standards of conduct;

(f) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to the Viatical Settlements Act for the express purposes of evading or avoiding the provisions of the act; or

(g) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit the acts or omissions specified in this subdivision;

(8) Life insurance producer means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to subdivision (1)(a) of section 44-4054;

(9) Person means a natural person or a legal entity, including an individual, a partnership, a limited liability company, an association, a trust, or a corporation;

(10) Policy means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state;

(11) Related provider trust means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the director as if

those records and files were maintained directly by the licensed viatical settlement provider;

(12) Special purpose entity means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets:

(a) For a financing entity or licensed viatical settlement provider; or

(b)(i) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by qualified institutional buyers as defined in Rule 144A of the federal Securities Act of 1933, as such act existed on January 1, 2008; or

(ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets;

(13) Terminally ill means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less;

(14) Viatical settlement broker means a person, including a life insurance producer as provided in subdivision (1)(b) of section 44-1103, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. Viatical settlement broker does not include an attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser;

(15)(a) Viatical settlement contract means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership or any portion of the insurance policy or certificate of insurance.

(b) Viatical settlement contract includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy if:

(i) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(ii) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) Viatical settlement contract does not include:

(i) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(ii) A loan, the proceeds of which are used solely to pay:

(A) Premiums for the policy; or

(B) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter-of-credit issuers;

(iii) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, if the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under the Viatical Settlements Act;

(iv) A premium finance loan not described in subdivision (15)(b) of this section;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, (B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or (C) are trusts established primarily for the benefit of such parties;

(vi) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(ix) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the director based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated under the act;

(16)(a) Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract.

(b) Viatical settlement provider does not include:

(i) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) A premium finance company making premium finance loans that takes an assignment of a life insurance policy solely as collateral for a loan;

(iii) The issuer of the life insurance policy;

(iv) An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(v) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(vi) A financing entity;

(vii) A special purpose entity;

(viii) A related provider trust;

(ix) A viatical settlement purchaser; or

(x) Any other person that the director exempts from the definition of viatical settlement provider;

(17)(a) Viatical settlement purchaser means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(b) Viatical settlement purchaser does not include:

(i) A licensee under the Viatical Settlements Act;

(ii) An accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust;

(18) Viaticated policy means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

(19)(a) Viator means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and who enters or seeks to enter into a viatical settlement contract. For purposes of the Viatical Settlements Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except as specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one of the viators agreed upon in writing by all the viators.

(b) Viator does not include:

(i) A licensee under the act;

(ii) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

Source: Laws 2001, LB 52, § 28; Laws 2007, LB296, § 179; Laws 2008, LB853, § 2.
Effective date July 18, 2008.

44-1103 License requirements; fee.

(1)(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator.

(b)(i) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(ii) No later than thirty days after the first day of operating as a viatical settlement broker, the life insurance producer shall notify the director that he or she is acting as a viatical settlement broker on a form prescribed by the director and shall pay any applicable fee to be determined by the director. Notification shall include an acknowledgment by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlements Act.

(iii) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(c) A licensed attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(2) Application for a viatical settlement provider or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director. The viatical settlement broker application shall be accompanied by a fee established by the director of not to exceed forty dollars. The viatical settlement provider application shall be accompanied by a fee established by the director of not to exceed one thousand five hundred dollars.

(3) All viatical settlement broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and may be renewed upon payment of a fee established by the director not to exceed forty dollars. All viatical settlement provider licenses shall expire on the last day of April in each year and may be renewed upon payment of a renewal fee established by the director not to exceed one hundred dollars. Failure to pay the fee by the renewal date results in expiration of the license.

(4) The applicant shall provide information on forms required by the director. The director shall have authority, at any time, to require the applicant to fully

disclose the identity of all stockholders, partners, officers, members, and employees, and the director may, in the exercise of the director's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any stockholder, partner, officer, member, or employee thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

(5) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers and viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(6) Upon the filing of an application and the payment of the license fee, the director shall make an investigation of each applicant and issue a license if the director finds that the applicant:

(a) If a viatical settlement provider, provides a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity for which application for a license is made;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which application for a license is made;

(d) If a viatical settlement broker or viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the director through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of two hundred fifty thousand dollars;

(i) The director may ask for evidence of financial responsibility at any time the director deems necessary;

(ii) Any surety bond issued pursuant to subdivision (d) of this subsection shall be in the favor of this state and shall specifically authorize recovery by the director on behalf of any person in this state who has sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices of the viatical settlement provider or viatical settlement broker; and

(iii) Notwithstanding any provision of this section to the contrary, the director shall accept as evidence of financial responsibility proof that financial instruments in accordance with the requirements of subdivision (d) of this subsection have been filed with a state where the applicant is licensed as a viatical settlement provider or viatical settlement broker;

(e) If a legal entity, provides a certificate of good standing from the state of its domicile; and

(f) If a viatical settlement provider or viatical settlement broker, provides an antifraud plan that meets the requirements of subsection (7) of section 44-1112.

(7) A licensee shall provide to the director new or revised information about officers, ten-percent or more stockholders, partners, directors, members, or designated employees within thirty days after the change.

(8) An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen hours of training related to viatical settlements and

viatical settlement transactions, except that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection (1) of this section shall not be subject to the requirements of this subsection.

Source: Laws 2001, LB 52, § 29; Laws 2003, LB 216, § 7; Laws 2008, LB853, § 3.
Effective date July 18, 2008.

44-1104 Disciplinary actions.

(1) The director may suspend, revoke, or refuse to issue or renew a license issued under the Viatical Settlements Act or that of a life insurance producer operating as a viatical settlement broker under subdivision (1)(b) of section 44-1103 if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement broker or viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as the act existed on January 1, 2008, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act or has otherwise engaged in bad faith conduct with one or more viators; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director may suspend or revoke a license pursuant to subsection (1) of this section after notice and a hearing held in accordance with the Administrative Procedure Act.

(3) If the director denies a license application or refuses to renew a license pursuant to subsection (1) of this section, he or she shall notify the applicant or licensee of the reason for such denial or refusal of renewal. The applicant or licensee has thirty days after receipt of such notification to demand a hearing.

The hearing shall be held within thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

Source: Laws 2001, LB 52, § 30; Laws 2007, LB117, § 8; Laws 2008, LB853, § 4.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-1105 Approval of viatical settlement contracts and disclosure statements.

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the director. The director shall disapprove a viatical settlement contract form or disclosure statement form if, in the director's opinion, the contract or provisions contained therein fail to meet the requirements of sections 44-1108, 44-1109, and 44-1111 and subsection (2) of section 44-1112 or are unreasonable, contrary to the interest of the public, or otherwise misleading or unfair to the viator. At the director's discretion, the director may require the submission of advertising material.

Source: Laws 2001, LB 52, § 31; Laws 2008, LB853, § 5.
Effective date July 18, 2008.

44-1106 Reporting requirements; confidentiality.

(1) Each viatical settlement provider shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by rule and regulation. Such information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, or health information of the viator or insured shall be filed with the director on a confidential basis.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(b) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of subsection (3) of section 44-1112;

(c) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(d) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(e) Is necessary to allow the viatical settlement provider or viatical settlement broker or his or her authorized representative to make contacts for the purpose of determining health status; or

(f) Is required to purchase stop-loss or financial guaranty coverage.

Source: Laws 2001, LB 52, § 32; Laws 2003, LB 216, § 8; Laws 2008, LB853, § 6.
Effective date July 18, 2008.

44-1107 Examination; investigation.

(1)(a) The director may conduct an examination of a licensee under the Viatical Settlements Act as often as the director, in his or her sole discretion, deems appropriate. In scheduling and determining the nature, scope, and frequency of examination, the director shall consider such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other relevant criteria as determined by the director.

(b) For purposes of completing an examination of a licensee under the act, the director may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the licensee.

(c) In lieu of an examination under the act of any foreign or alien licensee licensed in this state, the director may, in his or her sole discretion, accept an examination report on the licensee as prepared by the director for the licensee's state of domicile or port-of-entry state.

(d) As far as is practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance regulatory officials of other states in which the licensee transacts business.

(2)(a) A person required to be licensed under the act shall for five years retain copies of all:

(i) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract, purchase agreement, underwriting document, policy form, or application, whichever is later;

(ii) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(iii) Other records and documents related to the requirements of the act.

(b) This section does not relieve a person of the obligation to produce documents under subdivision (a) of this subsection to the director after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3)(a) Upon determining that an examination should be conducted, the director shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the

Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as he or she deems appropriate.

(b) Every licensee or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiner timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the director shall be grounds for the suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the director's jurisdiction. Any proceedings for the suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(c) The director may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. A person who is subpoenaed shall attend as a witness at the place specified in the subpoena anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized, charged against, and paid by the licensee being examined.

(d) When making an examination under the Viatical Settlements Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which will be borne by the licensee that is the subject of the examination.

(e) Nothing contained in the act shall be construed to limit the director's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in the act shall be construed to limit the director's authority to use, and, if appropriate, to make public, any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

(4)(a) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee or its agents or other persons examined, or as ascertained from the testimony of its officers or agents

or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than forty-five days following completion of the examination, the examiner in charge shall file with the director a verified written report of examination under oath. Upon receipt of the verified report, the director shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(i) Adopt the examination report as submitted or with modifications or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the licensee to take any action the director considers necessary and appropriate to cure such violation; or

(ii) Reject the examination report with directions to the examiner to reopen the examination for purposes of obtaining additional data, documentation, or information and to resubmit a report pursuant to subdivision (4)(b) of this section.

(d) Any licensee aggrieved by any action of the director pursuant to subdivision (4)(c) of this section may, within ten days after such action, make written request to the director for a hearing. Upon receipt of the licensee's request for a hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the licensee's request. The notice shall identify the subject of the hearing and the specific issues.

(e) Any hearing on an examination report shall be held in accordance with the Administrative Procedure Act.

(f) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subdivision (4)(d) of this section in the event that the licensee has not requested a hearing. Within thirty days after the filing of the examination report for public inspection, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the examination report and related orders.

(5)(a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the director unless required by law.

(b) Except as otherwise provided in the Viatical Settlements Act, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the director or any other person in the course of an examination made under the act, or in the course of analysis or investigation by the director of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to disclosure pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the

documents, materials, communications, or other information in the furtherance of any regulatory or legal action brought as part of the director's official duties.

(c) Documents, materials, communications, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(i) Created, produced, or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of assisting an examination made under the act or the law of another state or jurisdiction that is substantially similar to the act or assisting the director or the chief insurance regulatory official of another state in the analysis or investigation of the financial condition or market conduct of a licensee; or

(ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under subdivision (e) of this subsection by the director or the chief insurance regulatory official of another state.

(d) Neither the director nor any person that received the documents, materials, communications, or other information while acting under the authority of the director, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, communications, or other information subject to this subsection.

(e) In order to assist in the performance of his or her duties, the director:

(i) May share documents, materials, communications, or other information, including the confidential and privileged documents, materials, communications, or other information subject to this subsection, with other state, federal, foreign, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, foreign, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information;

(ii) May receive documents, materials, communications, or other information, including otherwise confidential and privileged documents, materials, communications, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, communications, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, communications, or other information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, communications, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (e) of this subsection.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in the act shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary report or results, or any matter relating thereto to the director or chief insurance regulatory official of any other state or country, to any law enforcement official of this state or any other state, to any agency of the federal government at any time, or to the National Association of Insurance Commissioners so long as the agency or office receiving the examination report or matters relating thereto agrees in writing to hold the examination report or matters confidential and in a manner consistent with the act.

(6)(a) An examiner may not be appointed by the director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under the Viatical Settlements Act. This subsection shall not be construed to automatically preclude an examiner from being:

(i) A viator;

(ii) An insured in a viaticated insurance policy; or

(iii) A beneficiary in an insurance policy that is proposed to be viaticated.

(b) Notwithstanding the requirements of this subsection, the director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under the act.

(7) The reasonable expenses of the examination of a licensee conducted under the Viatical Settlements Act shall be fixed and determined by the director who shall collect the same from the licensee examined. The licensee shall reimburse the amount thereof upon presentation of a statement by the director. Reimbursement shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses. All money collected by the director for examination of licensees shall be remitted in accordance with section 44-116.

(8)(a) No cause of action shall arise nor shall any liability be imposed against the director, the director's authorized representatives, or any examiner appointed by the director for any statements made or conduct performed in good faith while carrying out the provisions of the Viatical Settlements Act.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the director or the director's authorized representative or an examiner pursuant to an examination made under the act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way common-law or statutory privilege or immunity heretofore enjoyed by any person identified in this subsection.

(c) A person identified in this subsection is entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a

proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(9) The director may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

Source: Laws 2001, LB 52, § 33; Laws 2008, LB853, § 7.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-1108 Disclosure; requirements; rights of viator.

(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the disclosures required by this section no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:

(a) Possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax laws and state franchise and income tax laws, and assistance should be sought from a professional tax advisor;

(c) Proceeds from the viatical settlement could be subject to the claims of creditors;

(d) Receipt of the proceeds from a viatical settlement may adversely effect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(e) A viatical settlement broker represents exclusively the viator, not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator;

(f) The viator has the right to rescind the viatical settlement contract before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been paid to the viator as provided in subsection (3) of section 44-1109. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded by the viator or the viator's estate. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission;

(g) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that the ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

(h) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits, that may exist under the policy or certificate to be forfeited by the viator, and assistance should be sought from a financial advisor;

(i) A brochure describing the process of viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the director; and

(j) Following the execution of a viatical settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided under the Viatical Settlements Act. This contact is limited to once every six months if the insured has a life expectancy of more than one year, and no more than once every three months if the insured has a life expectancy of one year or less. All such contacts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement or by the authorized representative of the viatical settlement provider.

The disclosure document shall contain the following language: All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about you, the insured, including your identity or the identity of family members, a spouse, or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.

(2) A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(b) The name, business address, and telephone number of the viatical settlement provider;

(c) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, there is the possibility of a loss of coverage on the other lives under the policy, and consultation with an insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement is advised;

(e) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

(f) Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent. The viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(a) The name, business address, and telephone number of the viatical settlement broker;

(b) A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed viatical settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;

(d) The amount and method of calculating the viatical settlement broker's compensation. Compensation includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and

(e) If any portion of the viatical settlement broker's compensation is taken from a proposed viatical settlement offer, the viatical settlement broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

(4) If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change.

Source: Laws 2001, LB 52, § 34; Laws 2008, LB853, § 8.
Effective date July 18, 2008.

44-1108.01 Viatical settlement broker or viatical settlement provider; disclosure.

Before the initiation of a plan, transaction, or series of transactions, a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction, or series of transactions to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to or during the first five years after issuance of the policy.

Source: Laws 2008, LB853, § 9.
Effective date July 18, 2008.

44-1109 Viatical settlement contract requirements.

(1)(a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(i) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(ii) A document in which the insured consents, as required in subsection (2) of section 44-1106, to the release of his or her medical records to a viatical settlement provider, a viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy, or within twenty days after entering any agreement, option, promise, or other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision (c) of this subsection.

(c) The viatical settlement provider shall deliver a copy of the medical release required under subdivision (a)(ii) of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision (b) of this subsection, and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The National Association of Insurance Commissioners' form for verification of coverage shall be used unless another form is developed and approved by the director.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty calendar days after the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a National Association of Insurance Commissioners' form or any other form approved by the director. The insurer shall accept an original, facsimile, or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of subsection (3) of section 44-1110 and section 44-1115.

(e) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract and represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, that the viator acknowledges he or she is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, that the viator acknowledges the insured has a terminal or chronic illness and the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a viatical settlement broker performs any of the activities listed in this subsection on behalf of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(2) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days after the viatical settlement proceeds have been sent to the viator as provided in subsection (5) of this section. Rescission by the viator may be conditioned on the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of a written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator or notice of the death of the insured if rescinded by reason of death of the insured within the applicable rescission period.

(4) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents or after the date the viatical settlement provider receives the documents if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state-chartered or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to subdivision (1)(g) of section 44-1108 renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed as sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or sends a check for delivery to the viator by the United States Postal Service or other nationally recognized delivery service.

(6) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker

after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed in this state or its authorized representatives and shall be limited to once every six months for insureds with a life expectancy of more than one year and to no more than once every three months for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

Source: Laws 2001, LB 52, § 35; Laws 2008, LB853, § 10.
Effective date July 18, 2008.

44-1110 Prohibited acts.

(1) It is a violation of the Viatical Settlements Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing on the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

(a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy, plus the time covered under the group or individual policy, is at least sixty months. The time covered under the group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;

(b) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

(i) The viator or insured is terminally or chronically ill;

(ii) The viator's spouse died;

(iii) The viator divorced his or her spouse;

(iv) The viator retired from full-time employment;

(v) The viator became physically or mentally disabled and a physician determined that the disability prevented the viator from maintaining full-time employment; or

(vi) A final order, judgment, or decree was entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator for all or a substantial part of the viator's assets; and

(c) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(i) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the

extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in subdivision (15)(c)(v) of section 44-1102;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subdivision (1)(b) of this section and documents required by subsection (1) of section 44-1109 shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(3) If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification and the independent evidence described in subdivision (1)(b) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

(4) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any forms, disclosures, consent, or waiver form that has not been expressly approved by the director for use in connection with viatical settlement contracts in this state.

(5) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

Source: Laws 2001, LB 52, § 36; Laws 2008, LB853, § 11.
Effective date July 18, 2008.

44-1111 Advertising for viatical settlements; guidelines and standards.

(1) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements or related products or services to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical

settlements or related products or services through the advertising media and material used by licensees.

(2) This section applies to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

(3) Every licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the licensee or licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisement not furnished by the licensee.

(4) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the director from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5)(a) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a free look period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(c) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(d) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(e) The words free, no cost, without cost, no additional cost, or at no extra cost or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(f)(i) Any testimonial, appraisal, analysis, or endorsement used in an advertisement must be genuine, represent the current opinion of the author, be applicable to the viatical settlement contract, product, or service advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement. In using a testimonial, an appraisal, an analysis, or an endorsement, the licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(ii) If the individual making a testimonial, an appraisal, an analysis, or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(iii) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals or any society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider is disclosed. If the entity making the approval or endorsement is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an approval or endorsement, that fact shall be disclosed in the advertisement.

(iv) When a testimonial, an appraisal, an analysis, or an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

(v) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(vi) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

(vii) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(viii) An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the licensee, or to create the impression that a company other than the licensee would have any responsibility for the financial obligation under a viatical settlement contract.

(ix) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical

materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(x) An advertisement may state that a viatical settlement provider is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement providers may not be licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider is licensed.

(xi) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

(xii) The name of the licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, the name of any affiliate or controlling entity of the licensee, a service mark, a slogan, a symbol, or any other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(xiii) An advertisement shall not disclose or indirectly create the impression that any division or agency of the state or of the United States Government endorses, approves, or favors:

(A) Any licensee or its business practices or methods of operation;

(B) The merits, desirability, or advisability of any viatical settlement contract or viatical settlement program;

(C) Any viatical settlement contract or viatical settlement program; or

(D) Any life insurance policy or life insurance company.

(xiv) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(xv) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

Source: Laws 2001, LB 52, § 37; Laws 2008, LB853, § 13.
Effective date July 18, 2008.

44-1112 Fraud prevention and control.

(1)(a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of the Viatical Settlements Act or investigations of suspected or actual violations of the act.

(c) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(2)(a) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

(b) The lack of a statement as required in this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(3)(a) Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the director the information required by, and in a manner prescribed by, the director.

(b) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the director the information required by, and in a manner prescribed by, the director.

(4)(a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, if the information is provided to or received from:

(i) The director or the director's employees, agents, or representatives;

(ii) The Director of Banking and Finance or his or her employees, agents, or representatives;

(iii) Federal, state, or local law enforcement officials or their employees, agents, or representatives;

(iv) The National Association of Insurance Commissioners, the National Association of Securities Dealers, or the North American Securities Administrators Association, employees, agents, or representatives of any such association, or any other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

(v) The life insurer that issued the life insurance policy covering the life of the insured.

(b) This subsection does not apply to statements made with actual malice, fraudulent intent, or bad faith. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that this subsection does not apply because the person filing the report or furnishing the information did so with actual malice, fraudulent intent, or bad faith.

(c) A person furnishing information as identified in this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time it was initiated. An award granted under this subdivision shall not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.

(d) This section does not abrogate or modify common-law or statutory privileges or immunities enjoyed by a person described in this subsection.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the director in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) This subsection does not prohibit release by the director of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the director;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) At the discretion of the director, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence under this subsection does not abrogate or modify the privilege granted in this subsection.

(6) The Viatical Settlements Act shall not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the department; or

(c) Limit the powers granted elsewhere by the laws of this state to the director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(a) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the director, the director may order, or a licensee may request and the director may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives shall include:

(i) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

(ii) An antifraud plan submitted to the director. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent viatical settlement acts to the director;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the director shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

Source: Laws 2001, LB 52, § 38; Laws 2008, LB853, § 14.
Effective date July 18, 2008.

44-1113 Injunctions; civil remedies; violation; penalty.

(1) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, if any person violates the act or any rule or regulation implementing the act, the director may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the director determines are necessary to restrain the person from committing the violation.

(2) Any person damaged by the acts of a person in violation of the act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(3) The director may issue, in accordance with the Administrative Procedure Act, a cease and desist order upon a person that violates any provision of the Viatical Settlements Act, any rule, regulation, or order adopted or issued by the director, or any written agreement entered into between such person and the director.

(4) When the director finds that an activity in violation of the act presents an immediate danger to the public that requires an immediate final order, the director may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the director begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedure Act.

(5) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, any person who violates the act is subject to civil penalties of up to one thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the director issued under the Administrative Procedure Act. The director's order may require a person found to be in violation of the Viatical Settlements Act to make restitution to persons aggrieved by violations of the act.

(6) A person who is found by a court of competent jurisdiction, pursuant to an action initiated by the director, to have committed a fraudulent viatical settlement act, is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation.

(7) A person convicted of a violation of the act by a court of competent jurisdiction shall be guilty of a Class III misdemeanor. A person convicted of a violation of the act shall be ordered to pay restitution to persons aggrieved by

the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. A prosecution under this subsection shall be in lieu of an action under subsection (6) of this section.

(8) Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

Source: Laws 2001, LB 52, § 39; Laws 2008, LB853, § 15.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-1114 Director; powers.

The director shall have the authority to:

(1) Adopt and promulgate rules and regulations to carry out the Viatical Settlements Act;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons with a terminal or chronic illness or condition. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically ill or terminally ill;

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers;

(4) Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and

(5) Adopt rules and regulations governing the relationship and responsibilities of insurers, viatical settlement providers, and viatical settlement brokers during the viatication of a life insurance policy or certificate.

Source: Laws 2001, LB 52, § 40; Laws 2008, LB853, § 16.
Effective date July 18, 2008.

44-1115 Unfair trade practices.

A violation of the Viatical Settlements Act, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under the Unfair Insurance Trade Practices Act subject to the penalties contained in the act.

Source: Laws 2001, LB 52, § 41; Laws 2008, LB853, § 17.
Effective date July 18, 2008.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-1117 Fraudulent viatical settlement act; additional prohibited acts.

(1) With respect to any viatical settlement contract or insurance policy, no viatical settlement broker shall knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker.

(2) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider shall knowingly enter into a viatical settlement contract with a viator if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract.

(3) A violation of subsection (1) or (2) of this section shall be a fraudulent viatical settlement act.

(4) No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials as may be prescribed by rule and regulation have been filed with the director. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of the Viatical Settlements Act.

(5) No life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

Source: Laws 2008, LB853, § 12.
Effective date July 18, 2008.

ARTICLE 15

UNFAIR PRACTICES

(a) UNFAIR INSURANCE TRADE PRACTICES ACT

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

(c) MOTOR VEHICLE INSURANCE DATA BASE

(a) UNFAIR INSURANCE TRADE PRACTICES ACT

44-1521 Act, how cited.

Sections 44-1521 to 44-1535 shall be known and may be cited as the Unfair Insurance Trade Practices Act.

Source: Laws 1991, LB 234, § 3; Laws 2008, LB855, § 6.
Operative date July 18, 2008.

44-1534.01 Director; power to protect members of the United States Armed Forces; rules and regulations.

The Director of Insurance may adopt and promulgate rules and regulations to protect members of the United States Armed Forces from dishonest and

predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair as required by the federal Military Personnel Financial Services Protection Act, Public Law 109-290, as such law existed on July 18, 2008.

Source: Laws 2008, LB855, § 7.
Operative date July 18, 2008.

(b) UNFAIR INSURANCE CLAIMS SETTLEMENT PRACTICES ACT

44-1540 Unfair claims settlement practice; acts and practices prohibited.

Any of the following acts or practices by an insurer, if committed in violation of section 44-1539, shall be an unfair claims settlement practice:

(1) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear;

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of property and casualty claims (a) in which coverage and the amount of the loss are reasonably clear and (b) for loss of tangible personal property within real property which is insured by a policy subject to section 44-501.02 and which is wholly destroyed by fire, tornado, windstorm, lightning, or explosion;

(6) Compelling insureds or beneficiaries to institute litigation to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in litigation brought by them;

(7) Refusing to pay claims without conducting a reasonable investigation;

(8) Failing to affirm or deny coverage of a claim within a reasonable time after having completed its investigation related to such claim;

(9) Attempting to settle a claim for less than the amount to which a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;

(10) Attempting to settle claims on the basis of an application which was materially altered without notice to or knowledge or consent of the insured;

(11) Making a claims payment to an insured or beneficiary without indicating the coverage under which each payment is being made;

(12) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof-of-loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof-of-loss form;

(13) Failing, in the case of the denial of a claim or the offer of a compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action;

(14) Failing to provide forms necessary to present claims with reasonable explanations regarding their use within fifteen working days of a request;

(15) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or affiliated with the insurer are performed in a skillful manner. For purposes of this subdivision, a repairer is affiliated with the insurer if there is a preexisting arrangement, understanding, agreement, or contract between the insurer and repairer for services in connection with claims on policies issued by the insurer;

(16) Requiring the insured or claimant to use a particular company or location for motor vehicle repair. Nothing in this subdivision shall prohibit an insurer from entering into discount agreements with companies and locations for motor vehicle repair or otherwise entering into any business arrangements or affiliations which reduce the cost of motor vehicle repair if the insured or claimant has the right to use a particular company or reasonably available location for motor vehicle repair. If the insured or claimant chooses to use a particular company or location other than the one providing the lowest estimate for like kind and quality motor vehicle repair, the insurer shall not be liable for any cost exceeding the lowest estimate. For purposes of this subdivision, motor vehicle repair shall include motor vehicle glass replacement and motor vehicle glass repair; and

(17) Failing to provide coverage information or coordinate benefits pursuant to section 68-928.

Source: Laws 1991, LB 234, § 22; Laws 1992, LB 1006, § 16; Laws 1994, LB 978, § 24; Laws 1997, LB 543, § 1; Laws 2002, LB 58, § 1; Laws 2005, LB 589, § 9; Laws 2006, LB 1248, § 59.

(c) MOTOR VEHICLE INSURANCE DATA BASE

44-1545 Noncompliance; effect.

Failure by an insurance company subject to sections 60-3,136 to 60-3,139 to comply with the requirements of such sections and the rules and regulations adopted and promulgated under such sections by the Department of Motor Vehicles shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Source: Laws 2002, LB 488, § 7; Laws 2005, LB 274, § 229.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 16
GROUP INSURANCE

Section

44-1601 Life insurance; policy; issuance; requirements.

No policy of group life insurance shall be delivered in this state unless it is issued under one of the provisions of sections 21-1740, 44-1602 to 44-1606.03, and 44-1615 or under a policy or contract issued to any other substantially similar group which, in the discretion of the Director of Insurance, may be subject to the issuance of a group life insurance policy or contract.

Source: Laws 1949, c. 150, § 1(1), p. 377; Laws 1961, c. 210, § 5, p. 628; Laws 1969, c. 361, § 3, p. 1286; Laws 1983, LB 298, § 1; Laws 1996, LB 948, § 123; Laws 2008, LB855, § 8.
Operative date July 18, 2008.

44-1602 Life insurance; policy issued to an employer; requirements.

A policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer shall be subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer or all of any class or classes thereof. The policy may provide that the term employees shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, partners, and members of one or more affiliated corporations, proprietors, partnerships, or limited liability companies if the business of the employer and of such affiliated corporations, proprietors, partnerships, or limited liability companies is under common control. The policy may provide that the term employees shall include the individual proprietor, partners, or members if the employer is an individual proprietor, partnership, or limited liability company. The policy may provide that the term employee may include retired employees, former employees, and directors of a corporate employer; and

(2) The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees or from both such funds. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(1), p. 377; Laws 1957, c. 192, § 1, p. 670; Laws 1959, c. 212, § 1, p. 733; Laws 1993, LB 121, § 233; Laws 2006, LB 875, § 2; Laws 2008, LB855, § 9.
Operative date July 18, 2008.

44-1603 Life insurance; policy issued to creditor; requirements.

A policy issued to a creditor or its parent holding company or to a trustee or agent designated by two or more creditors, which creditor, parent holding

company, affiliate, trustee, or agent shall be deemed the policyholder, to insure debtors of the creditor shall be subject to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors, or all of any class or classes of the creditors. The policy may provide that the term debtors shall include borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction, the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors, partnerships, or limited liability companies if the business of the policyholder and of such affiliated corporations, proprietors, partnerships, or limited liability companies is under common control;

(2) The premium for the policy shall be paid by the policyholder from the creditor's funds, from charges collected from the insured debtors, or from both. A policy on which no part of the premiums is to be derived from the funds contributed by insured debtors specifically for their insurance must insure all eligible debtors or all except any as to whom evidence of individual insurability is not satisfactory to the insurer;

(3) The amount of insurance on the life of any debtor shall at no time exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor, except that insurance written in connection with open-end credit having a credit limit exceeding ten thousand dollars may be in an amount not exceeding the credit limit;

(4) The insurance shall be payable to the creditor or any successor to the right, title, and interest of the creditor. The payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment, and any excess of the insurance shall be payable to the estate of the insured; and

(5) Notwithstanding subdivisions (1) through (4) of this section, insurance on agricultural credit transaction commitments may be written up to the amount of the loan commitment on a nondecreasing or level-term plan and insurance on educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan.

Source: Laws 1949, c. 150, § 1(2), p. 378; Laws 1955, c. 180, § 1, p. 508; Laws 1957, c. 192, § 2, p. 671; Laws 1967, c. 273, § 1, p. 737; Laws 1974, LB 944, § 1; Laws 1993, LB 121, § 234; Laws 2008, LB855, § 10.
Operative date July 18, 2008.

44-1604 Life insurance; policy issued to a labor union or similar employee organization; requirements.

A policy issued to a labor union or similar employee organization, which shall be deemed the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents shall be subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof; and

(2) The premium for the policy shall be paid either from the union's or organization's funds or from funds contributed by the insured members specifi-

cally for their insurance or from both. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(3), p. 379; Laws 1957, c. 192, § 3, p. 673; Laws 2008, LB855, § 11.
Operative date July 18, 2008.

44-1605 Life insurance; policy issued to trust or trustees of a fund; requirements.

A policy issued to a trust or to the trustees of a fund established or adopted by two or more employers or by one or more labor unions or similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust or trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations shall be subject to the following requirements:

(1) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term employees shall include the employees of one or more subsidiary corporations and the employees, individual proprietors, members, and partners of one or more affiliated corporations, proprietorships, or partnerships if the business of the employer and of the affiliated corporations, proprietorships, or partnerships is under common control. The policy may provide that the term employees shall include the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term employees may include retired employees, former employees, and directors of a corporate employer. The policy may provide that the term employees shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship; and

(2) The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons, by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employers or unions or similar employee organizations. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance shall insure all eligible persons, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1949, c. 150, § 1(4), p. 380; Laws 1957, c. 192, § 4, p. 674; Laws 1969, c. 376, § 1, p. 1336; Laws 1989, LB 92, § 176; Laws 1993, LB 121, § 235; Laws 2008, LB855, § 12.
Operative date July 18, 2008.

44-1606.01 Life insurance; policy issued to association or trust; requirements.

(1) A policy may be issued to an association or to a trust or to the trustees of a fund established, created, or maintained for the benefit of members of one or

more associations. The association or associations shall have at the outset a minimum of one hundred persons, shall have been organized and maintained in good faith for purposes other than that of obtaining insurance, shall have been in active existence for at least two years, and shall have a constitution and bylaws which provide that (a) the association or associations shall hold regular meetings not less than annually to further the purposes of the members, (b) except for credit unions, the association or associations shall collect dues or solicit contributions from members, and (c) the members shall have voting privileges and representation on the governing board and committees.

(2) The policy shall be subject to the following requirements:

(a) The policy may insure members of the association or associations, employees thereof or employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employee's employer;

(b) The premium for the policy shall be paid from funds contributed by the association or associations, by the employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the associations or employer members; and

(c) A policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject the coverage in writing, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 1957, c. 192, § 5, p. 675; Laws 1967, c. 274, § 1, p. 739; Laws 1972, LB 1189, § 1; Laws 2008, LB855, § 13.
Operative date July 18, 2008.

44-1606.02 Life insurance; policy issued to credit union or trust; requirements.

A policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees, or agent shall be deemed the policyholder, to insure members of the credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials, shall be subject to the following requirements:

(1) The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes of the members; and

(2) The premium for the policy shall be paid by the policyholder from the credit union's funds and shall insure all eligible members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

Source: Laws 2008, LB855, § 14.
Operative date July 18, 2008.

44-1606.03 Group life insurance; policy; requirements.

(1) Group life insurance offered to a resident of this state under a group life insurance policy issued to a group other than one described in sections 21-1740, 44-1602 to 44-1606.02, and 44-1615 shall be subject to the following requirements:

(a) A group life insurance policy shall not be delivered in this state unless the Director of Insurance finds that:

(i) The issuance of the group policy is not contrary to the best interests of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged;

(b) A group life insurance policy shall not be offered in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those contained in subdivision (1)(a) of this section has made a determination that the requirements have been met;

(c) The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both; and

(d) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(2)(a) In the case of a program of insurance which, if issued on a group basis, would not qualify under sections 21-1740, 44-1602 to 44-1606.02, and 44-1615, the insurer shall cause to be distributed to prospective insureds a written notice that compensation shall or may be paid, if compensation of any kind shall or may be paid, to:

(i) A policyholder or sponsoring or endorsing entity in the case of a group policy; or

(ii) A sponsoring or endorsing entity in the case of an individual, blanket, or franchise policy marketed by means of direct response solicitation.

(b) The notice shall be distributed:

(i) Whether compensation is direct or indirect; and

(ii) Whether the compensation is paid to or retained by the policyholder or sponsoring or endorsing entity, or paid to or retained by a third party at the direction of the policyholder or sponsoring or endorsing entity, or an entity affiliated therewith by way of ownership, contract, or employment.

(c) The notice required by this section shall be placed on or accompany an application or enrollment form provided to prospective insureds.

(d) For purposes of this section:

(i) Direct response solicitation means a solicitation by a sponsoring or endorsing entity through the mail, telephone, or other mass communications media; and

(ii) Sponsoring or endorsing entity means an organization that has arranged for the offering of a program of insurance in a manner that communicates that eligibility for participation in the program is dependent upon affiliation with the organization or that it encourages participation in the program.

Source: Laws 2008, LB855, § 15.
Operative date July 18, 2008.

44-1607 Life insurance; policy; contents.

No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions or provisions which in the

opinion of the Director of Insurance are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder, except that provisions of subdivisions (6) through (10) of this section shall not apply to policies insuring the lives of debtors, that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies, and that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the Director of Insurance is or are equitable to the insured persons and to the policyholder, but nothing in this section shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies:

(1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him or her. This provision shall not preclude the assertion at any time of defenses based upon provisions in the policy that relate to eligibility for coverage;

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of death or incapacity of the insured person, to his or her beneficiary or personal representative;

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his or her coverage;

(5) A provision specifying that an equitable adjustment of premiums, of benefits, or of both is to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used;

(6) A provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, except that if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as

to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding two thousand dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured;

(7) A provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he or she is entitled, to whom the insurance benefits are payable, a statement as to any dependent's coverage included in the certificate, and the rights and conditions set forth in subdivisions (8), (9), and (10) of this section;

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him or her by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits if application for the individual policy is made and the first premium paid to the insurer within thirty-one days after such termination and if (a) the individual policy shall, at the option of such person, be on any one of the forms customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance, (b) the individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less the amount of any life insurance for which the person becomes eligible under the same or any other group policy within thirty-one days after termination, except that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this subdivision, be included in the amount which is considered to cease because of such termination, (c) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his or her age attained on the effective date of the individual policy, and (d) subject to the conditions set forth in subdivisions (8)(a) through (c) of this section, the conversion privilege shall also be available (i) to a spouse and a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy that terminates by reason of death and (ii) to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains insured under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy;

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him or her by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by subdivision (8) of this section, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of the amount of the

person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he or she is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, and ten thousand dollars;

(10) A provision that if a person insured under the group policy or the insured dependent of a covered person dies during the period within which he or she would have been entitled to have an individual policy issued to him or her in accordance with subdivision (8) or (9) of this section and before such an individual policy shall have become effective, the amount of life insurance which he or she would have been entitled to have issued to him or her under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made;

(11) If active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required from the insured had total disability not occurred. The continuation shall be on a premium-paying basis for a period of six months from the date on which the total disability started, but not beyond the earlier of:

(a) Approval by the insurer of continuation of the coverage under any disability provision which the group insurance policy may contain; or

(b) The discontinuance of the group insurance policy; and

(12) In the case of a policy insuring the lives of debtors, a provision that the insurer will furnish to the policyholder for delivery to each debtor insured under the policy a certificate of insurance describing the coverage and specifying that any death benefit shall first be applied to reduce or extinguish the indebtedness.

Source: Laws 1949, c. 150, § 2, p. 383; Laws 1957, c. 192, § 7, p. 677; Laws 1989, LB 92, § 177; Laws 2008, LB855, § 16.
Operative date July 18, 2008.

44-1607.01 Life insurance; individual policies; issuance; restrictions.

Individual life insurance policies, uniform as to amounts of insurance for each reasonable class eligible therefor, may be issued on a franchise or wholesale basis to five or more employees of a common employer or ten or more members of any trade or professional association, of a labor union or similar employee organization, or of any other association having had an active existence for at least two years when such association or union or organization has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance. Nothing in this section shall be construed to prohibit the issuance of individual life insurance policies on salary savings, bank draft, or similar type plans.

Source: Laws 1955, c. 181, § 1, p. 510; Laws 1989, LB 92, § 178; Laws 2008, LB855, § 17.
Operative date July 18, 2008.

44-1613 Life insurance; individual policy; time within which to exercise rights; notice.

If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen days prior to the expiration date of such period, then in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire fifteen days after the individual is given such notice but in no event shall such additional period extend beyond sixty days after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last-known address of the individual or mailed by the insurer to the last-known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

Source: Laws 1957, c. 192, § 8, p. 681; Laws 2008, LB855, § 18.
Operative date July 18, 2008.

44-1614 Life insurance; extension to spouse and children of employee or member; limitation.

Insurance under any group life insurance policy issued pursuant to section 44-1602, 44-1604, 44-1605, 44-1606, 44-1606.01, 44-1606.02, or 44-1606.03 may be extended to insure the employees or members against loss due to the death of their spouses and dependent children, or any class or classes thereof. Premiums for the insurance shall be paid either from funds contributed by the employer, the labor union or similar employee organization, or other person to whom the policy has been issued or from funds contributed by the covered persons, or from both. A policy on which no part of the premium for the spouse's and dependent child's coverage is to be derived from funds contributed by the covered persons shall insure all eligible employees or members with respect to their spouses and dependent children, or any class or classes of employees or members or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The amount of insurance for any covered spouse or dependent child under the policy may not exceed fifty percent of the amount of insurance for which the employee or member is insured.

Source: Laws 1957, c. 192, § 9, p. 681; Laws 1961, c. 224, § 1, p. 666; Laws 1972, LB 1189, § 2; Laws 1989, LB 92, § 179; Laws 2008, LB855, § 19.
Operative date July 18, 2008.

ARTICLE 19
TITLE INSURANCE

(b) TITLE INSURERS ACT

(b) TITLE INSURERS ACT

44-1988 Reserves.

(1) In determining the financial condition of a title insurer transacting the business of title insurance under the Title Insurers Act, the general provisions of the insurance laws of this state requiring the establishment of reserves sufficient to cover all known and unknown liabilities, including allocated and unallocated loss adjustment expense, shall apply except as provided in subsections (2) through (4) of this section.

(2) A title insurer shall establish and maintain a known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable and for which the title insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor.

(3)(a) If a title insurer is a foreign or non-United-States title insurer, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of statutory or unearned premium reserve required by the laws of the domiciliary state of the title insurer.

(b)(i) If a title insurer is a domestic insurer of this state, the title insurer shall establish and maintain a statutory or unearned premium reserve consisting of the amount of the statutory or unearned premium or reinsurance reserve on September 13, 1997, which balance shall be released in accordance with the law in effect at the time such sums were added to the reserve.

(ii) If a title insurer that is organized under the laws of another state transfers its domicile to this state, the statutory or unearned premium reserve shall be that amount required by the laws of the state of the title insurer's former state of domicile as of the date of transfer of domicile. Thereafter, the aggregate of such statutory or unearned premium reserve shall be released from the reserve and restored to profits over a period of twenty years pursuant to the formula set forth in subdivision (3)(b)(vi) of this section. Following the transfer of domicile to this state of the title insurer, for business written after the date of transfer of domicile, the title insurer shall add to and set aside in the statutory or unearned premium reserve such amount as provided in subdivision (3)(b)(v) of this section.

(iii) Out of total charges for title insurance policies written or assumed commencing on September 13, 1997, and until December 31, 1998, a title insurer shall add to and set aside in the reserve required under subdivision (3)(b)(i) of this section an amount equal to six percent of the sum of the following items set forth in the title insurer's most recent annual statement on file with the director:

(A) Direct premiums written;

(B) Escrow, settlement, and closing fees;

(C) Other title fees and service charges, including fees for closing protection letters; and

(D) Premiums for reinsurance assumed less premiums for reinsurance ceded.

(iv) Additions to the reserve required under subdivision (3)(b)(i) of this section commencing on January 1, 1999, and until December 31, 2005, shall be made out of total charges for title insurance policies and guarantees written,

equal to the sum of the following items, as set forth in the title insurer's most recent annual statement on file with the director:

(A) For each title insurance policy on a single risk written or assumed on or after January 1, 1999, and until December 31, 2005, twenty-five cents per one thousand dollars of net retained liability for title insurance policies under five hundred thousand dollars and twelve cents per one thousand dollars of net retained liability for title insurance policies of five hundred thousand dollars or greater; and

(B) Six percent of escrow, settlement, and closing fees collected in contemplation of the issuance of title insurance policies or guarantees.

(v) Out of total charges for title insurance policies written or assumed on or after January 1, 2006, a title insurer shall add to and set aside in the reserve required under subdivision (3)(b)(i) of this section an amount equal to seventeen cents per one thousand dollars of net retained liability for each title insurance policy.

(vi) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year pursuant to subdivisions (3)(b)(iii), (3)(b)(iv), and (3)(b)(v) of this section and the reserve required under subdivision (3)(b)(ii) of this section shall be released from the reserve and restored to net profits over a period of twenty years pursuant to the following formula: For an insurer that transfers its domicile to this state, thirty percent of the aggregate of such reserves on the forty-fifth day following the last day of the calendar quarter in which the insurer transfers its domicile and thereafter pursuant to the formula as set forth in this subdivision; and for all other insurers, thirty percent of the aggregate sum on July 1 of the year next succeeding the year of addition; fifteen percent of the aggregate sum on July 1 of the next succeeding year; ten percent of the aggregate sum on July 1 of each of the next succeeding two years; five percent of the aggregate sum on July 1 of each of the next succeeding two years; three percent of the aggregate sum on July 1 of each of the next succeeding two years; two percent of the aggregate sum on July 1 of each of the next succeeding seven years; and one percent of the aggregate sum on July 1 of each of the next succeeding five years. No release of statutory or unearned premium reserve shall occur if such release would result in the aggregate reserve falling below the actuarial level required by subsection (1) of this section.

(vii) The title insurer shall calculate an adjusted statutory or unearned premium reserve as of September 13, 1997. The adjusted reserve shall be calculated as if subdivisions (3)(b)(iii), (iv), and (vi) of this section had been in effect for all years beginning twenty years prior to September 13, 1997. For purposes of this calculation, the balance of the reserve as of that date shall be deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the title insurer's annual statement on file with the director on September 13, 1997, the title insurer shall, out of total charges for title insurance policies, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes September 13, 1997, until the entire excess has been added.

(viii) The aggregate of the amounts set aside in the reserve required under subdivision (3)(b)(i) of this section in any calendar year as adjustments to the title insurer's statutory or unearned premium reserve pursuant to subdivision

(3)(b)(vii) of this section shall be released from the reserve and restored to net profits, or equity if the additions required by such subdivision reduced equity directly, over a period not exceeding ten years pursuant to the following table:

Calendar Year of Addition	Release
1998	Equally over 10 years
1999	Equally over 9 years
2000	Equally over 8 years
2001	Equally over 7 years
2002	Equally over 6 years
2003	Equally over 5 years

(4) A title insurer shall establish and maintain a supplemental reserve consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (2) and (3) of this section, to cover the title insurer's liabilities with respect to all losses, claims, and loss adjustment expenses. The supplemental reserve required under this subsection shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve will be required until December 31, 1998; fifty percent of the otherwise applicable supplemental reserve will be required until December 31, 1999; and seventy-five percent of the otherwise applicable supplemental reserve will be required until December 31, 2000.

(5) Each title insurer subject to the Title Insurers Act shall file with its annual financial statement required under section 44-322 a certification by a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer shall conform to the National Association of Insurance Commissioners' annual statement instructions for title insurers.

Source: Laws 1997, LB 53, § 11; Laws 2006, LB 875, § 3.

ARTICLE 21

HOLDING COMPANIES

Section
44-2131. Fees.
44-2132. Registration of insurers.

44-2131 Fees.

The total fee for filing the documents required by sections 44-2126 to 44-2130 and all amendments to such filings shall be one thousand dollars. The initial fee for registration required by the provisions of section 44-2132 shall be one thousand dollars, and an additional fee of two hundred dollars shall be payable on May 1 of each calendar year thereafter so long as such registration continues. The fees provided for by this section shall be payable to the Department of Insurance and shall be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund.

Source: Laws 1991, LB 236, § 34; Laws 1993, LB 583, § 84; Laws 2005, LB 119, § 10.

44-2132 Registration of insurers.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer

subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement on a form prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

(e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the director disallows such a disclaimer. The director shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(12) The failure to file a registration statement or any summary of the registration statement thereto required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11.

ARTICLE 28

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section

44-2803 Health care provider, defined.

Health care provider means: (1) A physician; (2) a certified registered nurse anesthetist; (3) an individual, partnership, limited liability company, corporation, association, facility, institution, or other entity authorized by law to provide professional medical services by physicians or certified registered nurse anesthetists; (4) a hospital; or (5) a personal representative as defined in section 30-2209 who is successor or assignee of any health care provider designated in subdivisions (1) through (4) of this section.

Source: Laws 1976, LB 434, § 3; Laws 1993, LB 121, § 245; Laws 1995, LB 563, § 1; Laws 2005, LB 256, § 17.

44-2804 Physician, defined.

Physician shall mean a person with an unlimited license to practice medicine in this state pursuant to the Medicine and Surgery Practice Act or a person with a license to practice osteopathic medicine or osteopathic medicine and surgery in this state pursuant to sections 38-2029 to 38-2033.

Source: Laws 1976, LB 434, § 4; Laws 1988, LB 1100, § 3; Laws 2007, LB463, § 1136.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-2824 Health care provider; qualify under act; conditions.

(1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, partner, or limited liability company member shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827 or 44-2827.01, in the amount of five hundred thousand dollars for each occurrence. In the case of physicians or certified registered nurse anesthetists and their employers, employees, partners, or limited liability company members an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year for each named insured shall be provided. In the case of hospitals and their employees, an aggregate liability amount of three million dollars for all occurrences or claims made in any policy year or risk-loss trust year shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Any risk-loss trust shall be established and maintained only on an occurrence basis. Such qualification shall remain effective only as long as insurance coverage or risk-loss trust coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsections (1) and (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under the act.

Source: Laws 1976, LB 434, § 24; Laws 1984, LB 692, § 7; Laws 1986, LB 1005, § 1; Laws 1990, LB 542, § 3; Laws 1993, LB 121, § 247; Laws 1994, LB 884, § 59; Laws 2004, LB 998, § 1; Laws 2005, LB 256, § 18.

44-2827 Health care provider; proof of financial responsibility; filing by insurer.

Financial responsibility of a health care provider may be established only by filing with the director proof that the health care provider is insured pursuant to sections 44-2837 to 44-2839 or by a policy of professional liability insurance in a company authorized to do business in Nebraska. Such insurance shall be in the amount of five hundred thousand dollars per occurrence and, in cases involving physicians or certified registered nurse anesthetists, but not with respect to hospitals, an aggregate liability of at least one million dollars for all occurrences or claims made in any policy year shall be provided. In the case of hospitals and their employees, an aggregate liability amount of three million dollars for all occurrences or claims made in any policy year shall be provided. The filing shall state the premium charged for the policy of insurance.

Source: Laws 1976, LB 434, § 27; Laws 1986, LB 1005, § 3; Laws 2003, LB 146, § 2; Laws 2004, LB 998, § 3; Laws 2005, LB 256, § 19.

44-2835 Malpractice claim; settled or adjudicated to final judgment; report; contents; forwarded to Department of Health and Human Services.

(1) Each malpractice claim settled or adjudicated to final judgment against a health care provider under the Nebraska Hospital-Medical Liability Act shall be reported to the director by the plaintiff's attorney and by the health care provider or his or her insurer or risk manager within sixty days following final disposition of the claim. Such report to the director shall state the following:

(a) The nature of the claim;

(b) The alleged injury and the damages asserted;

(c) Attorney's fees and expenses incurred in connection with the claim or defense; and

(d) The amount of any settlement or judgment.

(2) The director shall forward the name of every health care provider, except a hospital, against whom a settlement has been made or judgment has been rendered under the act to the Department of Health and Human Services for such action, if any, as it deems to be appropriate under the circumstances.

Source: Laws 1976, LB 434, § 35; Laws 1994, LB 1223, § 1; Laws 1996, LB 1044, § 241; Laws 2007, LB296, § 180.

44-2847 Medical review panel; not to consider disputed questions of law; adviser to panel.

(1) Medical review panels shall be concerned only with the determination of the questions set forth in section 44-2843. Such panels shall not consider or report on disputed questions of law.

(2) To provide for uniformity of procedure, the Department of Health and Human Services may appoint a doctor of medicine from the members of the Board of Medicine and Surgery who may sit with each panel as an observer and as an adviser on procedure but without a vote.

Source: Laws 1976, LB 434, § 47; Laws 1996, LB 1044, § 242; Laws 1999, LB 828, § 5; Laws 2000, LB 1115, § 4; Laws 2007, LB296, § 181.

ARTICLE 29

NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL INSURANCE ASSOCIATION ACT

Section

44-2901 Hospitals; mutual insurance association; how incorporated; purpose.

Any three or more hospitals as defined in section 71-419, which are located in this state and licensed by the Department of Health and Human Services, may incorporate a mutual insurance association to insure member hospitals and their officers, directors, employees, and volunteer workers against liability arising from rendering, or failing to render, professional services in the treatment or care of patients by hospitals and their agents and employees or by member physicians.

Source: Laws 1976, LB 809, § 1; Laws 1996, LB 1044, § 243; Laws 2002, LB 1062, § 10; Laws 2007, LB296, § 182.

44-2902 Physicians; mutual insurance association; how incorporated; purpose.

Any ten or more physicians licensed under the Medicine and Surgery Practice Act may incorporate a mutual insurance association to insure member physicians, their professional corporations, partnerships, limited liability com-

panies, agents, and employees against liability arising from rendering or failing to render professional services in the treatment or care of patients.

Source: Laws 1976, LB 809, § 2; Laws 1993, LB 121, § 249; Laws 2007, LB463, § 1137.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-2904 Hospital association; qualified to become a member; when; insuring of risks; considerations.

Any hospital, whether within or without the state, shall be qualified to become a member of a hospital association incorporated under sections 44-2901 to 44-2918 if it is licensed either by the Department of Health and Human Services or by the corresponding authority in the state in which the hospital is located, except that no hospital outside of this state may become a member of such an association until one year after March 31, 1976, nor may any risks outside this state be insured under the provisions of sections 44-2901 to 44-2918 until one year after the issuance of a certificate of authority to transact insurance business by the Department of Insurance. All such risks shall be subject to the prior approval of the Director of Insurance.

In determining whether or not to grant approval for the insuring of risks outside of Nebraska, the Director of Insurance shall consider the following: (1) Limits of indemnity; (2) past and present loss experience of the hospital to be insured; (3) statutes, court decisions, and the insurance climate of the jurisdiction in which the risk is located; and (4) such other information as the director may deem relevant.

Source: Laws 1976, LB 809, § 4; Laws 1996, LB 1044, § 244; Laws 2007, LB296, § 183.

ARTICLE 32

HEALTH MAINTENANCE ORGANIZATIONS

Section

44-32,106 Health maintenance organization producer, defined.

Health maintenance organization producer shall mean a person licensed under subdivision (1)(b) of section 44-4054 who solicits, negotiates, effects,

procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for himself or herself, or who advertises or otherwise holds himself or herself out to the public as such.

Source: Laws 1990, LB 1136, § 15; Laws 2008, LB855, § 20.
Operative date July 18, 2008.

44-32,119 Application; transmittal to Department of Health and Human Services; duties.

(1) Upon receipt of an application for issuance of a certificate of authority, the Director of Insurance shall forthwith transmit copies of such application and accompanying documents to the Department of Health and Human Services.

(2) The Department of Health and Human Services shall determine whether the applicant has complied with sections 44-32,126 to 44-32,128 with respect to health care services to be furnished.

(3) Within forty-five days of receipt of the application for issuance of a certificate of authority, the Department of Health and Human Services shall certify to the Director of Insurance that the proposed health maintenance organization meets the requirements of such sections or notify the Director of Insurance that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

Source: Laws 1990, LB 1136, § 28; Laws 1996, LB 1044, § 245; Laws 2007, LB296, § 184.

44-32,120 Certificate of authority; issuance; conditions.

The Director of Insurance shall, within forty-five days of receipt of certification or notice of deficiencies pursuant to section 44-32,119, issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and being satisfied that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(2) Any deficiencies identified by the Department of Health and Human Services have been corrected and the department has certified to the Director of Insurance that the health maintenance organization's proposed plan of operation meets the requirements of sections 44-32,126 to 44-32,128;

(3) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles; and

(4) The health maintenance organization is in compliance with sections 44-32,138 to 44-32,148.

A certificate of authority shall be denied only after the Director of Insurance complies with the requirements of section 44-32,153.

Source: Laws 1990, LB 1136, § 29; Laws 1996, LB 1044, § 246; Laws 2007, LB296, § 185.

44-32,127 Quality assurance program; requirements.

Each health maintenance organization shall have an ongoing, internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services across all institutional and noninstitutional settings. The quality assurance program shall include, but not be limited to, the following:

(1) A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) A written quality assurance plan which describes the following:

(a) The health maintenance organization's scope and purpose in quality assurance;

(b) The organizational structure responsible for quality assurance activities;

(c) Contractual arrangements, when appropriate, for delegation of quality assurance activities;

(d) Confidentiality policies and procedures;

(e) A system of ongoing evaluation activities;

(f) A system of focused evaluation activities;

(g) A system for credentialing providers and performing peer review activities; and

(h) Duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) A written statement describing the system of ongoing quality assurance activities, including, but not limited to, the following:

(a) Problem assessment, identification, selection, and study;

(b) Corrective action, monitoring, evaluation, and reassessment; and

(c) Interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) A written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format; and

(5) A written plan for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided.

Each health maintenance organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available to the Department of Health and Human Services. Each health maintenance organization shall also establish a mechanism for periodic reporting of quality assurance program activities to the governing body of the health maintenance organization, the providers, and appropriate staff.

Source: Laws 1990, LB 1136, § 36; Laws 1996, LB 1044, § 247; Laws 2007, LB296, § 186.

44-32,128 Patient record system; requirements.

Each health maintenance organization shall ensure the use and maintenance of an adequate patient record system which facilitates documentation and

retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees. Enrollee clinical records shall be available to the Department of Health and Human Services or an authorized designee for examination and review to ascertain compliance with section 44-32,127 or as deemed necessary by the department.

Source: Laws 1990, LB 1136, § 37; Laws 1996, LB 1044, § 248; Laws 2007, LB296, § 187.

44-32,134 Filings; required.

(1) Every health maintenance organization shall file annually, on or before March 1, an annual financial statement with the Director of Insurance, with a copy to the Department of Health and Human Services, covering the preceding calendar year. The annual financial statement shall be on forms prescribed by the Director of Insurance and shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals of the National Association of Insurance Commissioners.

(2) Every health maintenance organization shall file annually, on or before March 1, with the Director of Insurance, with a copy to the department:

(a) A list of the providers who have executed a contract that complies with section 44-32,141; and

(b) A description of the grievance procedures, the total number of grievances handled through such procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

(3) Every health maintenance organization shall file annually, on or before June 1, audited financial statements with the Director of Insurance, with a copy to the department.

(4) The Director of Insurance may require such additional reports as are deemed necessary and appropriate to carry out his or her duties under the Health Maintenance Organization Act.

Source: Laws 1990, LB 1136, § 43; Laws 1996, LB 1044, § 249; Laws 2000, LB 930, § 9; Laws 2007, LB296, § 188.

44-32,136 Grievance procedure.

Each health maintenance organization shall establish and maintain a grievance procedure to provide for the resolution of grievances initiated by enrollees. The procedure shall be approved by the Director of Insurance after consultation with the Department of Health and Human Services. The Director of Insurance or the department may examine the grievance procedure. The health maintenance organization shall maintain records regarding grievances received since the date of the last examination.

Source: Laws 1990, LB 1136, § 45; Laws 1996, LB 1044, § 250; Laws 2007, LB296, § 189.

44-32,152 Examinations; expenses.

(1) The Director of Insurance may make an examination of the affairs of any health maintenance organization in accordance with the Insurers Examination

Act and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state. The Department of Health and Human Services may make an examination concerning the quality assurance program of any health maintenance organization and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(2) Every health maintenance organization and provider shall submit its books and records for an examination and in every way facilitate the completion of the examination. For the purpose of an examination, the Director of Insurance and the Department of Health and Human Services may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of a provider concerning the business. An examination shall not involve the confidential communications between physicians and patients.

(3) The expenses of an examination shall be assessed against the health maintenance organization being examined and remitted to the Director of Insurance or the Department of Health and Human Services for whom the examination is being conducted in the manner provided in the Insurers Examination Act.

(4) In lieu of an examination, the Director of Insurance or the Department of Health and Human Services may accept the report of an examination made by the insurance commissioner, insurance director, insurance superintendent, or equivalent official or director of health or equivalent official of another state.

Source: Laws 1990, LB 1136, § 61; Laws 1993, LB 583, § 90; Laws 1996, LB 1044, § 251; Laws 2007, LB296, § 190.

Cross References

Insurers Examination Act, see section 44-5901.

44-32,153 Certificate of authority; suspension, revocation, or denial; grounds.

If the Director of Insurance finds that any of the conditions listed in this section exist, any certificate of authority issued under the Health Maintenance Organization Act may be suspended or revoked or any application for a certificate of authority may be denied:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 44-32,117 unless amendments to such submissions have been filed with and approved by the director;

(2) The health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of sections 44-32,129 to 44-32,133 and 44-32,149;

(3) The health maintenance organization does not provide or arrange for basic health care services;

(4) The Department of Health and Human Services certifies to the Director of Insurance that:

(a) The health maintenance organization does not meet the requirements of subsection (2) of section 44-32,119; or

(b) The health maintenance organization is unable to fulfill its obligations to furnish health care services;

(5) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(6) The health maintenance organization has failed to correct, within the time prescribed by section 44-32,154, any deficiency occurring due to such health maintenance organization's prescribed minimum net worth being impaired;

(7) The health maintenance organization has failed to implement grievance procedures in a reasonable manner to resolve valid complaints;

(8) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees; or

(10) The health maintenance organization has otherwise failed substantially to comply with the act.

Source: Laws 1990, LB 1136, § 62; Laws 1996, LB 1044, § 252; Laws 2007, LB296, § 191.

44-32,156 Suspension, revocation, denial, or administrative penalty; order; hearing.

Suspension or revocation of a certificate of authority, the denial of an application for a certificate, or the imposition of an administrative penalty shall be by written order and shall be sent by the Director of Insurance to the health maintenance organization or applicant by certified or registered mail and to the Department of Health and Human Services. The written order shall state the grounds, charges, or conduct on which the suspension, revocation, denial, or administrative penalty is based. The health maintenance organization or applicant may in writing request a hearing within thirty days from the date of mailing of the order. If no written request is made, such order shall be final upon the expiration of thirty days.

Source: Laws 1990, LB 1136, § 65; Laws 1996, LB 1044, § 253; Laws 2007, LB296, § 192.

44-32,157 Hearing; notice; decision; appeal.

(1) If the health maintenance organization or applicant requests a hearing pursuant to section 44-32,156, the Director of Insurance shall issue a written notice of hearing and send it to the health maintenance organization or applicant by certified or registered mail and to the Department of Health and Human Services stating:

(a) A specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and

(b) A specific place for the hearing, which may be either in Lancaster County or in the county where the health maintenance organization's or applicant's principal place of business is located.

(2) If a hearing is requested, the chief executive officer of the Department of Health and Human Services or his or her designated representative shall be in attendance and shall participate in the proceedings. The recommendations and findings of the chief executive officer with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority shall be conclusive and binding upon the Director of Insurance.

(3) After the hearing or upon failure of the health maintenance organization to appear at such hearing, the Director of Insurance shall take whatever action he or she deems necessary based on written findings and shall mail his or her decision to the health maintenance organization or applicant with a copy to the Department of Health and Human Services. The action of the Director of Insurance and the recommendation and findings of the chief executive officer may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The act shall apply to proceedings under this section to the extent it is not in conflict with this section.

Source: Laws 1990, LB 1136, § 66; Laws 1996, LB 1044, § 254; Laws 2007, LB296, § 193.

Cross References

Administrative Procedure Act, see section 84-920.

44-32,163 Fees; distribution.

Every health maintenance organization subject to the Health Maintenance Organization Act shall pay to the director the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, three hundred dollars;

(2) For filing an amendment to the organizational documents that requires approval, twenty dollars;

(3) For filing each annual report, two hundred dollars; and

(4) For renewing a certificate of authority, one hundred dollars.

Fees charged under this section shall be distributed one-half to the Director of Insurance and one-half to the Department of Health and Human Services. All fees or other assessments transmitted to the Department of Health and Human Services pursuant to the act shall be remitted to the state treasury for credit to the Health and Human Services Cash Fund. There shall be appropriated from money credited to the fund pursuant to this section such amounts as are available to pay expenses considered incident to the administration of the act.

Source: Laws 1990, LB 1136, § 72; Laws 1991, LB 703, § 12; Laws 1996, LB 1044, § 255; Laws 2007, LB296, § 194.

44-32,165 Violations; conference; requirements.

If the Director of Insurance or the Department of Health and Human Services has for any reason cause to believe that any violation of the Health Maintenance Organization Act has occurred or is threatened, the Director of Insurance or the Department of Health and Human Services may give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in such suspected violation to arrange a

conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, if it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation. Proceedings under this section shall not be governed by any formal procedural requirements and may be conducted in such manner as the Director of Insurance or the Department of Health and Human Services deems appropriate under the circumstances. Unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section are satisfied.

Source: Laws 1990, LB 1136, § 74; Laws 1996, LB 1044, § 256; Laws 2007, LB296, § 195.

44-32,170 Practice of medicine; laws not applicable.

Any health maintenance organization authorized under the Health Maintenance Organization Act shall not be deemed to be practicing medicine and shall be exempt from the Medicine and Surgery Practice Act relating to the practice of medicine.

Source: Laws 1990, LB 1136, § 79; Laws 2007, LB463, § 1138.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.

44-32,176 Department of Health and Human Services; contracts authorized.

The Department of Health and Human Services, in carrying out obligations under the Health Maintenance Organization Act, may contract with qualified persons to make recommendations concerning the determinations required to be made. Such recommendations may be accepted in full or in part by the department.

Source: Laws 1990, LB 1136, § 85; Laws 1996, LB 1044, § 257; Laws 2007, LB296, § 196.

44-32,180 Taxation.

(1) Any health maintenance organization subject to the Health Maintenance Organization Act shall also be subject to (a) the premium taxation provisions of Chapter 77, article 9, to the extent that the direct writing premiums are not otherwise subject to taxation under such article and (b) the retaliatory taxation provisions of section 44-150.

(2) Except as provided in subsection (3) of this section, any capitation payment made in accordance with the Medical Assistance Act shall be excluded from computation of any tax obligation imposed by subsection (1) of this section.

(3) Upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services of federal financial participation based upon the changes made by Laws 2002, LB 9, Ninety-seventh Legislature, Second Special Session, any capitation payment made in accordance with the Medical Assistance Act shall be included in the computation of any tax obligation imposed by subsection (1) of this section.

Source: Laws 1990, LB 1136, § 89; Laws 1996, LB 969, § 2; Laws 2002, Second Spec. Sess., LB 9, § 1; Laws 2006, LB 1248, § 60.

Cross References

Managed Care Plan Act, see section 68-1048.
Medical Assistance Act, see section 68-901.

ARTICLE 33
LEGAL SERVICE INSURANCE CORPORATIONS

Section
44-3311. Legal expense insurance policy; possible violations; director; report.

44-3311 Legal expense insurance policy; possible violations; director; report.

The director shall report to the Counsel for Discipline of the Nebraska Supreme Court any information of possible instances of overcharging for legal services, incompetence, or violations of the Nebraska Rules of Professional Conduct by lawyers who provide services in connection with a legal expense insurance policy.

Source: Laws 1979, LB 52, § 11; Laws 2004, LB 1207, § 44; Laws 2006, LB 1115, § 35.

ARTICLE 35
SERVICE CONTRACTS

(b) MOTOR VEHICLES

Section
44-3521. Terms, defined.
44-3522. Motor vehicle service contract; requirements.
44-3523. Motor vehicle service contract reimbursement insurance policy; requirements.

(b) MOTOR VEHICLES

44-3521 Terms, defined.

For purposes of the Motor Vehicle Service Contract Reimbursement Insurance Act:

(1) Director means the Director of Insurance;

(2) Mechanical breakdown insurance means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear and that is issued by an insurance company authorized to do business in this state;

(3) Motor vehicle means any motor vehicle as defined in section 60-339;

(4) Motor vehicle service contract means a contract or agreement given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for such service, for the operational or structural failure of a motor vehicle due to defect in materials or workmanship or normal wear and tear but does not include mechanical breakdown insurance;

(5) Motor vehicle service contract provider means a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract, except

that motor vehicle service contract provider does not include an insurer as defined in section 44-103;

(6) Motor vehicle service contract reimbursement insurance policy means a policy of insurance meeting the requirements in section 44-3523 that provides coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider; and

(7) Service contract holder means a person who purchases a motor vehicle service contract.

Source: Laws 1990, LB 1136, § 93; Laws 2005, LB 274, § 230; Laws 2006, LB 875, § 4.

44-3522 Motor vehicle service contract; requirements.

No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless:

(1) The motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state;

(2) True and correct copies of the motor vehicle service contract and the motor vehicle service contract reimbursement insurance policy have been filed with the director; and

(3) The contract conspicuously states:

(a) That the obligations of the motor vehicle service contract provider to the service contract holder are covered under the motor vehicle service contract reimbursement insurance policy; and

(b) The name and address of the issuer of the motor vehicle service contract reimbursement insurance policy.

Source: Laws 1990, LB 1136, § 94; Laws 2006, LB 875, § 5; Laws 2007, LB188, § 1.

44-3523 Motor vehicle service contract reimbursement insurance policy; requirements.

(1) No motor vehicle service contract reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy conspicuously states that the insurer will pay on behalf of the motor vehicle service contract provider all sums which the provider is legally obligated to pay in the performance of its contractual obligations under the motor vehicle service contracts issued or sold by the provider.

(2) The motor vehicle service contract reimbursement insurance policy shall completely and fully reimburse the motor vehicle service contract provider for all repair costs incurred under the motor vehicle service contract from the first dollar of coverage. The motor vehicle service contract reimbursement insurance policy shall not require or allow a motor vehicle service contract provider to assume any portion of direct or first-dollar liability for repairs under a motor vehicle service contract. The motor vehicle service contract reimbursement insurance policy shall not include any provision whereby the insurer provides coverage in excess of reserves held by the motor vehicle service contract provider or only in the event of the motor vehicle service contract provider's

insolvency or default. All unearned premium reserves and claim reserve funds shall be established as liabilities on the books of the insurer in accordance with statutory accounting practices. This subsection shall not apply to programs directly obligating an automobile dealer to perform under the motor vehicle service contract.

Source: Laws 1990, LB 1136, § 95; Laws 2006, LB 875, § 6.

ARTICLE 39
EDUCATION

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

(a) CONTINUING EDUCATION FOR INSURANCE LICENSEES

44-3901 Continuing education; purpose.

The purpose of sections 44-3901 to 44-3908 is to establish requirements for continuing education of insurance producers and consultants who are licensed in order to maintain and improve the quality of insurance services provided to the public.

Source: Laws 1982, LB 274, § 1; Laws 2008, LB855, § 21.
Operative date July 18, 2008.

44-3902 Terms, defined.

For purposes of sections 44-3901 to 44-3908, unless the context otherwise requires:

(1) Licensee shall mean a natural person who is licensed by the department as a resident insurance producer or consultant;

(2) Director shall mean the Director of Insurance;

(3) Department shall mean the Department of Insurance; and

(4) Two-year period shall mean the period commencing on the date of licensing and ending on the date of expiration of the licensee's first license effective for not less than two years and each succeeding twenty-four-month period.

Source: Laws 1982, LB 274, § 2; Laws 1989, LB 92, § 242; Laws 1999, LB 260, § 4; Laws 2008, LB855, § 22.
Operative date July 18, 2008.

44-3904 Licensee; requirements; furnish evidence of continuing education.

(1)(a)(i) Licensees qualified to solicit property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty,

or personal lines property and casualty insurance shall be required to complete six hours of approved continuing education activities for each line of insurance, including each miscellaneous line, in which he or she is licensed in each two-year period commencing before January 1, 2010. Licensees qualified to solicit life, accident and health or sickness, property, casualty, or personal lines property and casualty insurance shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2010.

(ii) Licensees qualified to solicit only crop insurance shall be required to complete three hours of approved continuing education activities in each two-year period.

(iii) Licensees qualified to solicit any lines of insurance other than those described in subdivisions (i) and (ii) of subdivision (a) of this subsection shall be required to complete six hours of approved continuing education activities in each two-year period for each line of insurance, including each miscellaneous line, in which he or she is licensed. Licensees qualified to solicit variable life and variable annuity products shall not be required to complete additional continuing education activities because the licensee is qualified to solicit variable life and variable annuity products.

(b) Licensees who are not insurance producers shall be required to complete twenty-one hours of approved continuing education activities in each two-year period commencing on or after January 1, 2000.

(c) In each two-year period, every licensee shall furnish evidence to the director that he or she has satisfactorily completed the hours of approved continuing education activities required under this subsection for each line of insurance in which he or she is licensed as a resident insurance producer, except that no licensee shall be required to complete more than twenty-four cumulative hours required under this subsection in any two-year period commencing on or after January 1, 2000.

(d) A licensee shall not repeat a continuing education activity for credit within a two-year period.

(2) In each two-year period, licensees required to complete approved continuing education activities under subsection (1) of this section shall, in addition to such activities, be required to complete three hours of approved continuing education activities on insurance industry ethics.

(3) When the requirements of this section have been met, the licensee shall furnish to the department evidence of completion for the current two-year period.

Source: Laws 1982, LB 274, § 4; Laws 1985, LB 48, § 2; Laws 1988, LB 1114, § 1; Laws 1989, LB 92, § 244; Laws 1989, LB 279, § 4; Laws 1993, LB 583, § 91; Laws 1994, LB 978, § 29; Laws 1999, LB 260, § 5; Laws 2008, LB855, § 23.
Operative date July 18, 2008.

(b) PRELICENSING EDUCATION FOR INSURANCE PRODUCERS

44-3909 Prelicensing education requirements.

Except as otherwise provided by the Insurance Producers Licensing Act, no individual shall be eligible to apply for a license as an insurance producer

unless he or she has completed the following prelicensing education requirements:

(1) An individual seeking a qualification for a license in the life insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of life insurance;

(2) An individual seeking a qualification for a license in the accident and health or sickness insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of accident and health or sickness insurance;

(3) An individual seeking a qualification for a license in the property insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of property insurance;

(4) An individual seeking a qualification for a license in the casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of casualty insurance;

(5) An individual seeking a qualification for a license in the personal lines property and casualty insurance line shall complete at least six hours of education on insurance industry ethics in addition to fourteen hours of education in the area of personal lines property and casualty insurance;

(6) An individual seeking a qualification for a license in the title insurance line shall complete at least six hours of education on insurance industry ethics in addition to six hours of education in the area of title insurance; and

(7) An individual seeking a qualification for a license in the crop insurance line shall complete at least three hours of education on insurance industry ethics in addition to three hours of education in the area of crop insurance.

Source: Laws 1993, LB 583, § 95; Laws 1999, LB 260, § 7; R.S.1943, (1998), § 44-4005.01; Laws 2001, LB 51, § 29; Laws 2008, LB855, § 24.
Operative date July 18, 2008.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-3910 Prelicensing education requirements; exemptions.

The prelicensing education requirements of section 44-3909 shall not apply to an individual who, at the time of application for an insurance producer license:

(1) Is applying for qualification for the life insurance line of authority and has the certified employee benefit specialist designation, the chartered financial consultant designation, the certified insurance counselor designation, the certified financial planner designation, the chartered life underwriter designation, the fellow life management institute designation, or the Life Underwriter Training Council fellow designation;

(2) Is applying for qualification for the accident and health or sickness insurance line of authority and has the registered health underwriter designation, the certified employee benefit specialist designation, the registered employee benefit consultant designation, or the health insurance associate designation;

(3) Is applying for qualification for the property insurance, casualty insurance, or personal lines property and casualty insurance line of authority and has the accredited advisor in insurance designation, the associate in risk management designation, the certified insurance counselor designation, or the chartered property and casualty underwriter designation;

(4) Has a college degree with a concentration in insurance from an accredited educational institution;

(5) Is an individual described in section 44-4056 or 44-4058; or

(6) Is a person who the director may exempt pursuant to a rule or regulation adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1993, LB 583, § 96; R.S.1943, (1998), § 44-4005.02; Laws 2001, LB 51, § 30; Laws 2008, LB855, § 25.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-3911 Prelicensing education requirements; certificate of completion; filing.

A certificate of completion of the prelicensing education requirements shall be filed with the director.

Source: Laws 1993, LB 583, § 97; R.S.1943, (1998), § 44-4005.03; Laws 2001, LB 51, § 31; Laws 2008, LB855, § 26.
Operative date July 18, 2008.

ARTICLE 40
INSURANCE PRODUCERS LICENSING ACT

Section
44-4064. Fees.

44-4064 Fees.

(1) Before any license or appointment is issued or renewed under the Insurance Producers Licensing Act or before any appointment is terminated, the person requesting such license shall pay or cause to be paid to the director the following fee or fees, if applicable, as established by the director:

(a) For each insurance producer license, a fee not to exceed one hundred dollars;

(b) For each annual appointment, a fee not to exceed ten dollars;

(c) For each termination of an appointment, a fee not to exceed ten dollars;

(d) A late renewal fee not to exceed one hundred twenty-five dollars;

(e) A reinstatement fee not to exceed one hundred seventy-five dollars; and

(f) For each business entity license, a fee not to exceed fifty dollars.

(2) If a licensed person (a) desires to add a line or lines of insurance to his or her existing license, (b) seeks to change any other information contained in the license for any reason, or (c) applies for a duplicate license, such person shall pay to the director a fee established by the director to cover the expense of replacing the license.

(3) The director shall not prorate fees imposed pursuant to subsection (1) of this section and shall not refund fees to any person in the event of a license denial. The director may refund fees paid pursuant to this section if the payment has been made in error.

Source: Laws 2001, LB 51, § 18; Laws 2008, LB855, § 27.
Operative date July 18, 2008.

ARTICLE 41
PREFERRED PROVIDERS

Section

44-4109.01 Policies or contracts; requirements.

Policies or contracts authorized by sections 44-4109 and 44-4110 are subject to the following requirements:

(1) A prospective insured shall be provided information about the terms and conditions of the insurance arrangement to enable him or her to make an informed decision about accepting a system of health care delivery. If the insurance arrangement is described orally to a prospective insured, the description shall use easily understood, truthful, and objective terms. All written descriptions shall be in a readable and understandable format. Specific items that shall be included are:

(a) Coverage provisions, benefits, and any exclusions by category of service, provider, or physician and, if applicable, by specific service;

(b) Any prior authorization or other review requirements, including preauthorization review, concurrent review, postservice review, and postpayment review, the manner in which an insured may obtain review of a denial of coverage, and the nature of any liability an insured may incur if the insured does not comply with the authorization requirements of the policy, contract, certificate, or other materials; and

(c) Information on the insured's financial responsibility for payment for deductibles, coinsurance, or other noncovered services;

(2) If an insurer conducts customer satisfaction surveys concerning an insurance arrangement, the results of such surveys shall be made available upon request to existing and prospective participants in insurance arrangements;

(3) The policy, contract, certificate, or other materials shall establish a mechanism by which a committee of preferred providers will be involved in reviewing and advising the insurance arrangement about medical policy, including coverage of new technology and procedures, quality and credentialing criteria, and medical management procedures;

(4) All policies or contracts shall have a system for credentialing participating preferred providers and shall allow all providers within the insurance arrangement's geographic service area to apply for such credentials periodically and not less than annually. The credentialing process:

(a) Shall begin upon application of a provider for inclusion in the policy or contract; and

(b) Shall be based solely on quality, accessibility, or economic considerations and shall be applied in accordance with reasonable business judgment.

Credentialing standards or criteria shall be made available, upon request, to providers and insureds;

(5) If the policy or contract is with an organized delivery system formed by insurers, hospitals, physicians, or allied health professionals, or a combination of such entities, participation by a provider may be limited to a participant in the organized delivery system or to providers having staff privileges at a particular health care facility;

(6) If an insurer or a participant in an insurance arrangement refuses to contract with a provider, the provider shall be permitted to appeal the adverse decision. A person conducting the provider-appeal procedure may be employed by the insurer or participant in an insurance arrangement if the person does not initially participate in the decision to take adverse action against the provider. The provider-appeal procedure shall include, but not be limited to, notice of the date and time of the hearing, a statement of the criteria or standards on which the decision was based, an opportunity for the provider to review information upon which the adverse decision was based, an opportunity for the provider to appear personally at the hearing and present any additional information, and a timely decision on the appeal;

(7) If the insurer or participant in an insurance arrangement excludes or fails to retain a provider previously contracted with to provide health care services, the provider shall be permitted to appeal the adverse decision in the same manner as set forth in subdivision (6) of this section. If the provider disagrees with the decision, the provider shall be permitted to appeal to an appeals committee consisting of one person selected by each party to the appeal and one person mutually agreeable to both parties. The parties to the appeal shall pay to the appeal committee any costs associated with the person they select and shall share the costs of the person mutually agreeable to both parties, which costs shall not be recoverable by the other party;

(8) Prior to initiation of a proceeding to terminate a provider's participation, the provider shall be given an opportunity to enter into and complete a corrective action plan, except in cases of fraud or imminent harm to patient health or when the provider's ability to provide services has been restricted by an action, including probation or any compliance agreements, by the Department of Health and Human Services or other governmental agency; and

(9) Policies and contracts shall not exclude providers with practices containing a substantial number of patients having severe or expensive medical conditions, except that this section shall not prohibit plans from excluding providers who fail to meet the insurance arrangement's criteria for quality, accessibility, or economic considerations.

Source: Laws 1995, LB 473, § 4; Laws 1996, LB 1044, § 258; Laws 2007, LB296, § 197.

44-4110 Development of preferred provider organizations; conditions.

All providers of health services in Nebraska may develop preferred provider organizations and contract with insurers and participants in insurance arrangements if such providers have met all licensure and certification requirements necessary to practice a specific profession or to operate a specific health care

facility pursuant to the Health Care Facility Licensure Act and the Uniform Credentialing Act. An organization of preferred providers may limit itself to one or more specific professions or specialties within a profession, as defined in the Uniform Credentialing Act, and may limit the number of participating providers to that required to adequately meet the need for its particular program and the purpose of sections 44-4101 to 44-4113 to furnish health services in a manner reasonably expected to contain or lower costs.

Source: Laws 1984, LB 902, § 10; Laws 1995, LB 473, § 6; Laws 2007, LB463, § 1139.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

ARTICLE 42

COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section

44-4221 Purchase of health insurance coverage from pool; eligibility.

(1) To be eligible to purchase health insurance coverage from the pool, an individual shall:

(a) Be a resident of the state for a period of at least six months and shall:

(i) Have received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer;

(ii) Currently have, or have been offered within six months prior to application to the pool, health insurance coverage by an insurer which includes a restrictive rider which limits insurance coverage for a preexisting medical condition; or

(iii) Have been refused health insurance coverage comparable to the pool, or have been offered such coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool;

(b) Be a resident of the state for any length of time and be an individual:

(i) For whom, as of the date the individual seeks pool coverage under this section, the aggregate of the periods of creditable coverage is eighteen or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(ii) Who is not eligible for coverage under a group health plan, medicare, or medical assistance pursuant to the Medical Assistance Act or section 43-522, or any successor program, and who does not have any other health insurance coverage;

(iii) With respect to whom the most recent prior creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

(iv)(A) Who, if such individual was offered the option of continuation coverage under COBRA or under a similar program, both elected such continuation coverage and exhausted such continuation coverage, or (B) who had been

offered the option of continuation coverage under COBRA or under a similar program at a premium rate higher than that available from the pool; or

(c) Be a resident of the state for any length of time and be a qualified trade adjustment assistance eligible individual.

(2) The board may adopt and promulgate a list of medical or health conditions for which an individual would be eligible for pool coverage without applying for health insurance coverage pursuant to subdivision (1)(a) of this section. Individuals who can demonstrate the existence or history of any medical or health conditions on the list adopted and promulgated by the board shall be eligible to apply directly to the pool for health insurance coverage.

Source: Laws 1985, LB 391, § 21; Laws 1992, LB 1006, § 35; Laws 1997, LB 862, § 26; Laws 1998, LB 1035, § 7; Laws 1998, LB 1063, § 2; Laws 2000, LB 1253, § 24; Laws 2004, LB 1047, § 12; Laws 2006, LB 1248, § 61.

Cross References

Medical Assistance Act, see section 68-901.

44-4222 Purchase of health insurance from pool coverage; ineligibility.

(1) An individual shall not be eligible for initial or continued pool coverage if:

(a) He or she is eligible for medicare benefits by reason of age or medical assistance established pursuant to the Medical Assistance Act;

(b) He or she is a resident or inmate of a correctional facility, except that this subdivision shall not apply if such individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221;

(c) He or she has terminated pool coverage unless twelve months have elapsed since such termination, except that this subdivision shall not apply if such individual has received and become ineligible for medical assistance pursuant to the Medical Assistance Act during the immediately preceding twelve months, if such individual is eligible for pool coverage under subdivision (1)(b) of section 44-4221, or if such individual is eligible for waiver of any waiting period or preexisting condition exclusions pursuant to section 44-4228;

(d) The pool has paid out one million dollars in claims for the individual; or

(e) He or she is no longer a resident of Nebraska.

(2) Pool coverage shall terminate for any individual on the date the individual becomes ineligible under subsection (1) of this section.

Source: Laws 1985, LB 391, § 22; Laws 1987, LB 319, § 2; Laws 1989, LB 279, § 8; Laws 1990, LB 1136, § 106; Laws 1992, LB 1006, § 36; Laws 1997, LB 862, § 27; Laws 1998, LB 1035, § 8; Laws 2000, LB 1253, § 25; Laws 2006, LB 1248, § 62.

Cross References

Medical Assistance Act, see section 68-901.

44-4228 Pool coverage; exclusions; application for coverage; requirements.

(1) Pool coverage shall exclude charges or expenses incurred during the first six months following the effective date of pool coverage as to any condition (a) which had manifested itself during the six-month period immediately preceding the effective date of pool coverage in such a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or (b) for which

medical advice, care, or treatment was recommended or received during the six-month period immediately preceding the effective date of pool coverage.

(2) Any individual whose health coverage is involuntarily terminated on or after January 1, 1992, and who is not eligible for a conversion policy or a continuation-of-coverage policy or contract available under state or federal law may apply for pool coverage but shall submit proof of eligibility pursuant to subdivision (1)(a) of section 44-4221. If such proof is supplied and if pool coverage is applied for under the Comprehensive Health Insurance Pool Act within sixty days after the involuntary termination and if premiums are paid to the pool for the entire coverage period, any waiting period or preexisting condition exclusions provided for under the pool coverage shall be waived to the extent similar exclusions, if any, under the previous health coverage have been satisfied and the effective date of the pool coverage shall be the day following termination of the previous health coverage. The board may assess an additional premium for pool coverage provided pursuant to this subsection notwithstanding the premium limitations stated in section 44-4227. For purposes of this section, an individual whose health coverage is involuntarily terminated means an individual whose health insurance or health plan is terminated by reason of the withdrawal by the insurer from this state, bankruptcy or insolvency of the employer or employer trust fund, or cessation by the employer of providing any group health plan for all of its employees.

(3) Any individual whose health coverage under a continuation-of-coverage policy or contract available under state or federal law terminates or is involuntarily terminated on or after July 1, 1993, for any reasons other than nonpayment of premium may apply for pool coverage but shall submit proof of eligibility applied for within ninety days after the termination or involuntary termination. If premiums are paid to the pool for the entire coverage period, the effective date of the pool coverage shall be the day following termination of the previous coverage under the continuation-of-coverage policy or contract. Any waiting period or preexisting condition exclusions provided for under the pool shall be waived to the extent similar exclusions, if any, under any prior health coverage have been satisfied.

(4) Subsection (1) of this section shall not apply to an individual who has received medical assistance pursuant to the Medical Assistance Act or section 43-522 or an organ transplant recipient terminated from coverage under medicare during the six-month period immediately preceding the effective date of coverage.

(5) All waiting periods and preexisting conditions shall be waived for an individual eligible for pool coverage under subdivision (1)(b) of section 44-4221.

(6) The waiting period and preexisting condition exclusions are waived for a qualified trade adjustment assistance eligible individual under subdivision (1)(c) of section 44-4221 if the individual maintained creditable coverage for an aggregate period of three months as of the date on which the individual seeks to enroll in pool coverage, not counting any period prior to a sixty-three-day break in coverage.

Source: Laws 1985, LB 391, § 28; Laws 1989, LB 279, § 10; Laws 1990, LB 1136, § 108; Laws 1991, LB 419, § 5; Laws 1992, LB 835, § 1; Laws 1994, LB 1222, § 60; Laws 1997, LB 862, § 28; Laws 1998, LB 1035, § 9; Laws 2000, LB 1253, § 30; Laws 2004, LB 1047, § 13; Laws 2006, LB 1248, § 63.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 43
INTERGOVERNMENTAL RISK MANAGEMENT

Section
44-4317. Public agency; tax levy; agreements; authorized.

44-4317 Public agency; tax levy; agreements; authorized.

(1)(a) Any public agency which has the authority to levy a tax shall be authorized to levy a tax, to contract indebtedness, and to issue general obligation bonds payable from such a tax levy to pay the premium costs of general liability insurance, property insurance, workers' compensation insurance, health, dental, or accident insurance, life insurance, and any other insurance to protect against any of the losses described in section 44-4304 and to pay all costs and expenses associated with membership in a risk management pool, including, but not limited to, standard insurance coverages, group self-insurance coverages, assessments levied by the pool, retirement of debt incurred by the pool, and operating expenses of the pool.

(b) A member of a risk management pool which has the authority to levy a tax shall be authorized to enter into agreements obligating the member to make payments beyond its current budget year for any of such purposes.

(c) Taxes levied by a public agency other than an educational service unit or school district for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool may be levied in excess of any tax limitation imposed by statute.

(d) Except as permitted in subdivision (1)(e) of this section, taxes levied by an educational service unit or school district on or after April 3, 2008, for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool shall be subject to the levy limit applicable to such public agency under section 77-3442.

(e) Taxes levied by an educational service unit or school district for the payment of the principal of, premium of, or interest on such a general obligation bond of such educational service unit or school district issued prior to April 3, 2008, shall be excluded from the levy limit applicable to such public agency under section 77-3442.

(2) Nothing in the Intergovernmental Risk Management Act shall be construed or interpreted as permitting the State of Nebraska, represented by the Risk Manager, to enter into any agreement or contract or do any act in contravention of the Constitution of the State of Nebraska.

Source: Laws 1987, LB 398, § 17; Laws 2001, LB 664, § 6; Laws 2008, LB988, § 1.
Effective date April 3, 2008.

ARTICLE 45
LONG-TERM CARE INSURANCE ACT

Section
44-4501. Act, how cited.
44-4519. Rules and regulations.
44-4521. Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.

44-4501 Act, how cited.

Sections 44-4501 to 44-4521 shall be known and may be cited as the Long-Term Care Insurance Act.

Source: Laws 1987, LB 416, § 1; Laws 1992, LB 1006, § 44; Laws 1999, LB 323, § 1; Laws 2007, LB117, § 9.

44-4519 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Long-Term Care Insurance Act, including minimum standards for insurance producer training.

Source: Laws 1992, LB 1006, § 53; Laws 2007, LB117, § 11.

44-4521 Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.

(1) On or after August 1, 2008, an individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for health or sickness and accident insurance and has completed a one-time training course and ongoing training every twenty-four months thereafter. All training shall meet the requirements of subsection (2) of this section.

(2) The one-time training course required by subsection (1) of this section shall be no less than eight hours in length, and the required ongoing training shall be no less than four hours in length. All training required under subsection (1) of this section shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

Training required by subsection (1) of this section shall not include any sales or marketing information, materials, or training other than those required by state or federal law.

(3)(a) Insurers subject to the Long-Term Care Insurance Act shall obtain verification that the insurance producer receives training required by subsection (1) of this section before a producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. Records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(b) Insurers subject to the act shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the Department of Health and Human Services that producers have received the training required by subsection (1) of this section and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(4) The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements of the State of Nebraska.

(5) The training requirements of subsection (1) of this section may be approved as continuing education courses pursuant to sections 44-3901 to 44-3913.

Source: Laws 2007, LB117, § 10; Laws 2008, LB855, § 28.
Operative date July 18, 2008.

ARTICLE 47

PREPAID LIMITED HEALTH SERVICE ORGANIZATIONS

Section
44-4726. Taxes.

44-4726 Taxes.

(1) The same taxes provided for in section 44-32,180 shall be imposed upon each prepaid limited health service organization, and such organizations also shall be entitled to the same tax deductions, reductions, abatements, and credits that health maintenance organizations are entitled to receive.

(2) Except as provided in subsection (3) of this section, any capitation payment made in accordance with the Medical Assistance Act shall be excluded from computation of any tax obligation imposed by subsection (1) of this section.

(3) Upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services of federal financial participation based upon the changes made by Laws 2002, LB 9, Ninety-seventh Legislature, Second Special Session, any capitation payment made in accordance with the Medical Assistance Act shall be included in the computation of any tax obligation imposed by subsection (1) of this section.

Source: Laws 1989, LB 320, § 26; Laws 1990, LB 1136, § 110; Laws 1996, LB 969, § 8; Laws 2002, Second Spec. Sess., LB 9, § 2; Laws 2006, LB 1248, § 64.

Cross References

Managed Care Plan Act, see section 68-1048.
Medical Assistance Act, see section 68-901.

ARTICLE 48
INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION

Section
44-4814. Director; powers and duties.

44-4814 Director; powers and duties.

(1) The director as rehabilitator may appoint one or more special deputies who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the director, with the approval of the court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. The director, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. Such committee shall serve at the pleasure of the director and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the director or the court in rehabilitation proceedings conducted under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act.

(2) The rehabilitator may take such action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers of the insurer, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

(4)(a)(i) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect such changes.

(ii) Such plan may include the establishment of a trust to be treated as an insurer with the trustee serving as liquidator under the act retaining all liabilities and assets except the charter and licenses and shall include provisions requiring the rehabilitator to petition the court to convert the rehabilitation proceedings to a liquidation. Such trust shall be considered an insurer for the purposes of the act. Such plan may include provisions for cancellation of all outstanding stock and other securities of, and other equity interests in, the insurer and court approval of the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the insurer together with any or all of its licenses and certificates to do business and such other assets as the rehabilitator deems appropriate to the transaction. The proceeds of such sale shall be assets of the trust. The order of the court approving such a sale may provide that the sale is free and clear of

all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer and may discharge the insurer and all property which is the subject of the sale from all claims and interests of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer, except that such a discharge shall not affect the rights of the insurer's insureds, creditors, shareholders, and members and all other persons interested in the insurer's estate to participate in distributions from the trust as otherwise provided in the act.

(b) Upon application of the rehabilitator for approval of the plan and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company if all rights of shareholders are first relinquished. A plan for a life insurer may also propose the imposition of a moratorium upon loan and cash surrender rights under policies for such period and to such an extent as may be necessary.

(5) The rehabilitator shall have the power under sections 44-4826 and 44-4827 to avoid fraudulent transfers.

Source: Laws 1989, LB 319, § 14; Laws 1991, LB 236, § 69; Laws 2005, LB 119, § 12.

ARTICLE 49

MANAGING GENERAL AGENTS

Section
44-4902. Terms, defined.
44-4903. License; requirements.
44-4904. Contract; requirements.
44-4906. Insurer; duties.
44-4907. Acts of agent; how treated; examination authority.

44-4902 Terms, defined.

For purposes of the Managing General Agents Act:

(1) Actuary means a person who is a member in good standing of the American Academy of Actuaries;

(2) Business entity means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(3) Director means the Director of Insurance;

(4) Insurer means any person duly licensed in this state as an insurance company pursuant to Chapter 44;

(5) Managing general agent means any person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for such insurer, whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites in any one quarter or year an amount of gross direct written premium equal to or more than five percent of the policyholders surplus as reported in the last annual statement of the insurer in any one quarter or year and who (a) adjusts or pays

claims in excess of ten thousand dollars or (b) negotiates reinsurance on behalf of the insurer. Managing general agent does not include an attorney in fact for a reciprocal or interinsurance exchange under a power of attorney, an employee of the insurer, a United States manager of the United States branch of an alien insurer, or an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, and is subject to the Insurance Holding Company System Act and whose compensation is not based on the volume of premiums written;

(6) Person means an individual or a business entity; and

(7) Underwrite means the authority to accept or reject risk on behalf of the insurer.

Source: Laws 1990, LB 1136, § 113; Laws 1991, LB 236, § 86; Laws 1993, LB 583, § 108; Laws 2006, LB 875, § 7.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-4903 License; requirements.

No person shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless such person is licensed in accordance with the Insurance Producers Licensing Act. No person shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed in accordance with such act.

Source: Laws 1990, LB 1136, § 114; Laws 2006, LB 875, § 8.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-4904 Contract; requirements.

No person acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

(3) All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in an institution that is insured by the Federal Deposit Insurance Corporation. The account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses;

(4) Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and

records related to its business in a form usable by the insurer, and the director shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the director. Such records shall be retained as determined by the director;

(5) The contract may not be assigned in whole or in part by the managing general agent;

(6) Appropriate underwriting guidelines, including:

(a) The maximum annual premium volume;

(b) The basis of the rates to be charged;

(c) The types of risks which may be written;

(d) Maximum limits of liability;

(e) Applicable exclusions;

(f) Territorial limitations;

(g) Policy cancellation provisions; and

(h) The maximum policy period. The insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable insurance statutes and regulations;

(7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be at least one hundred thousand dollars or ten percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer in the prior calendar year, whichever is greater, but not greater than five hundred thousand dollars;

(8) The insurer may require the managing general agent to maintain an errors and omissions policy;

(9) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner;

(b) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of an amount set by the director or an amount set by the insurer, whichever is less;

(c) All claim files will be the joint property of the insurer and the managing general agent. Upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate, and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the

settlement authority during the pendency of any dispute regarding the cause for termination;

(10) If electronic claims files are in existence, the contract must address the timely transmission of the data;

(11) The managing general agent shall use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use; and

(12) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 44-4906.

Source: Laws 1990, LB 1136, § 115; Laws 2006, LB 875, § 9.

44-4906 Insurer; duties.

(1) The insurer shall have on file an independent audited financial examination or reports for the two most recent fiscal years that prove that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years, the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting principles, for any completed fiscal years and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: (a) Amounts shown on the consolidated audited financial/annual report shall be shown on the worksheet; (b) amounts for each entity shall be stated separately; and (c) explanations of consolidating and eliminating entries.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. The opinion shall be in addition to any other required loss reserve certification.

(3) The insurer shall periodically, at least semiannually, conduct an onsite review of the underwriting and claims-processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the director. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the director may request.

(6) An insurer shall each quarter review its books and records to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the director of such determination and the insurer and producer shall fully comply with the Managing General Agents Act within thirty days.

(7) No officer, director, employee, subproducer, or controlling shareholder of the insurer's managing general agent shall be appointed to its board of directors. This subsection shall not apply to relationships governed by the Insurance Holding Company System Act.

(8) The insurer shall keep the bond required by subdivision (7) of section 44-4904 on file for review by any applicable state insurance director, superintendent, or commissioner.

Source: Laws 1990, LB 1136, § 117; Laws 1991, LB 236, § 87; Laws 2006, LB 875, § 10.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-4907 Acts of agent; how treated; examination authority.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined by the department as if it were the insurer.

Source: Laws 1990, LB 1136, § 118; Laws 2006, LB 875, § 11.

ARTICLE 51
INVESTMENTS

Section
44-5103. Terms, defined.
44-5109. Investments in name of insurer.
44-5110. Participation.
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44-5103 Terms, defined.

For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a

member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(14) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(15) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(16) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(17) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Source: Laws 1991, LB 237, § 3; Laws 1997, LB 273, § 2; Laws 1999, LB 259, § 11; Laws 2005, LB 119, § 13; Laws 2007, LB117, § 12.

44-5109 Investments in name of insurer.

An insurer's investments shall be held in its own name or the name of its nominee, except that:

(1) Investments may be held in the name of a clearing corporation, a custodian, or the nominee of either on the following conditions:

(a) The clearing corporation, custodian, or nominee shall be legally authorized to hold the particular investment for the account of others;

(b) Security certificates held by the custodian shall be held separate from the security certificates of the custodian and of all its other customers; and

(c) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurer. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall

also identify where the securities are and if in a clearing corporation, the name of the clearing corporation, and if through an agent, the name of the agent; and

(2) An insurer may participate through a member bank in the Federal Reserve book-entry system. The records of the member bank shall at all times show that the investments are held for the insurer or for specific accounts of the insurer.

Source: Laws 1991, LB 237, § 9; Laws 2005, LB 119, § 14.

44-5110 Participation.

(1) An insurer may invest in an individual interest of a pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 44-5109. For purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 44-5109 and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act; and

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase.

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

Source: Laws 1991, LB 237, § 10; Laws 1997, LB 273, § 5; Laws 2003, LB 216, § 13; Laws 2007, LB117, § 13.

44-5111 Computation of investment limitations.

Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to

admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to the Insurers Examination Act, in which case the results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by the lesser of actual cost or admitted value at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at the lesser of fair value or admitted value.

For purposes of this section, actual cost means the total amount invested, expended, or which should be reasonably anticipated to be invested or expended in the acquisition or organization of any investment, insurer, or subsidiary, including all organizational expenses or contributions to capital and surplus whether or not represented by the purchase of capital stock or issuance of other securities.

Source: Laws 1991, LB 237, § 11; Laws 1993, LB 583, § 111; Laws 2007, LB117, § 14.

Cross References

Insurers Examination Act, see section 44-5901.

44-5120 Lending of securities.

(1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) For purposes of this section, market value includes accrued interest.

(3) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(4) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 20; Laws 1997, LB 273, § 10; Laws 2002, LB 1139, § 28; Laws 2003, LB 216, § 15; Laws 2007, LB117, § 15.

44-5137 Foreign securities.

(1) An insurer may invest in securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets;

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; and

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, twenty percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Source: Laws 1991, LB 237, § 37; Laws 1997, LB 273, § 18; Laws 2007, LB117, § 16.

Cross References

Bonds of the State of Israel, see section 8-148.03.

44-5140 Preferred stock.

(1) An insurer may invest in the preferred stock of any corporation which:

(a) Has retained earnings of not less than one million dollars;

(b) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(c) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of twenty-five percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall a life insurer's investments authorized under this section that are not rated P-1 or P-2 by the Securities Valuation Office exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 40; Laws 2007, LB117, § 17.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-5141 Common stock; equity interests.

(1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any corporation having a majority of its operations in this state which has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities other than general partnerships.

(b)(i) A life insurer's investments authorized under this subsection shall not exceed fifty percent of its policyholders surplus.

(ii) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) Except as authorized under the Insurance Holding Company System Act, an insurer shall not invest in more than ten percent of the total equity interests in any business entity other than an insurer.

(4) A life insurer's investments authorized under this section shall not exceed one hundred percent of its policyholders surplus.

Source: Laws 1991, LB 237, § 41; Laws 1997, LB 273, § 20; Laws 2007, LB117, § 18.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-5143 Real estate mortgages.

(1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed eighty percent of the market value of the real estate

together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than eighty percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in improved real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by rentals to accrue therefrom to the owner of the real estate;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of such leasehold with improvements at the time of making the loan; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds eighty percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a)(i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) If there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bondholders under the provisions of the trust indenture.

(6)(a) An insurer may invest in notes or bonds secured by second mortgages or other second liens, including all inclusive or wraparound mortgages or liens,

upon real property encumbered only by a first mortgage or lien which meets the requirements set forth in this section, subject to either of the following conditions:

(i) The insurer also owns the note or bond secured by the prior first mortgage or lien and the aggregate value of both loans does not exceed the loan to market value ratio requirements of this section; or

(ii) The note or bond is secured by an all-inclusive or wraparound lien or mortgage which conforms to the requirements set forth in subdivision (b) of this subsection, if the aggregate value of the resulting loan does not exceed the loan to market value ratio requirements of this section.

(b) For purposes of this subsection, the terms wraparound and all-inclusive lien or mortgage refer to a loan made by an insurer to a borrower on the security of a mortgage or lien on real property other than property containing a residence of one to four units or on which a residence of one to four units is to be constructed, where such real property is encumbered by a first mortgage or lien and which loan is subject to all of the following requirements:

(i) There is no more than one preexisting mortgage or lien on the real property;

(ii) The total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of the amount disbursed by the insurer on account of the loan and the outstanding balance of the obligation secured by the preexisting lien or mortgage;

(iii) The instrument evidencing the lien or mortgage by which the obligation of the borrower to the insurer under the loan is secured, is recorded, and the lien is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan; and

(iv) The insurer either (A) files for record in the office of the recorder of the county in which the real property is located a duly acknowledged request for a copy of any notice of default or of sale under the preexisting lien or (B) is entitled under applicable law to receive notice of default, sale, or foreclosure of the preexisting lien.

(7)(a) An insurer may invest in mezzanine real estate loans subject to the following conditions:

(i) The terms of the mezzanine loan agreement:

(A) Require that each pledgor abstain from granting additional security interests in the equity interest pledged;

(B) Employ techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower; and

(C) Require the real estate owner, or mezzanine real estate loan borrower, to: (I) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine borrower, the equity interest in the real estate owner; (II) not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate borrower, holding an ownership interest in the real estate owner; and (III) not incur additional debt, other than limited trade payables, a first mortgage loan, and the mezzanine real estate loan; and

(ii) At the time of the initial investment, the mezzanine real estate loan lender shall corroborate that the sum of the first mortgage and the mezzanine real estate loan does not exceed one hundred percent of the value of the real estate as evidenced by a current appraisal.

(b) The value of an insurer's investments authorized under this subsection shall not exceed three percent of its admitted assets.

(c) For purposes of this subsection, mezzanine real estate loan refers to a loan made by an insurer to a borrower on the security of debt obligation, that is not a security, which is secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

(8) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 43; Laws 2004, LB 1047, § 18; Laws 2005, LB 119, § 15.

44-5144 Real estate.

(1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company interests, in unencumbered real estate if:

(a) The real estate is leased under a lease contract in which the lessee contracts to pay all assessments, taxes, maintenance, and operating costs;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof, title to such real estate shall vest in the lessee.

When an insurer owns less than the entire real estate leased under a lease described in this subsection, the legal title to the real estate shall be in the name of a trustee which meets the qualifications set out in subsection (5) of section 44-5143 under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate.

For purposes of this subsection, unencumbered real estate means real estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4)(a) An insurer with policyholders surplus of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in a city or village or within five miles of the limits thereof.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such unexpired term or forty years from acquisition.

(c) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 44; Laws 1993, LB 121, § 260; Laws 1997, LB 273, § 21; Laws 2005, LB 119, § 16.

44-5149 Hedging transactions; derivative instruments.

(1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2)(a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer may use derivative instruments in replication transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in replication transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders' surplus;

(b) The aggregate statement value of options, caps, and floors written in replication transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders' surplus;

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in replication transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders' surplus;

(d) The replication transactions are limited to the replication of investments or instruments otherwise permitted under the Insurers Investment Act; and

(e) The insurer engages in hedging transactions or income generation transactions pursuant to this section and has sufficient experience with derivatives generally such that its performance and procedures reflect that the insurer has been successful in adequately identifying, measuring, monitoring, and limiting exposures associated with such transactions and that the insurer has superior corporate controls over such activities as well as a sufficient number of

dedicated staff who are knowledgeable and skilled with these sophisticated financial instruments.

(4) An insurer may purchase or sell one or more derivative instruments to offset any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(5) An insurer shall demonstrate to the director upon request the intended hedging, income-generation, or replication characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

(6) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

(7) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

(8) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instrument, including, but not limited to, options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return; and

(d) Replication transaction means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging or income-

generation transaction authorized pursuant to this section shall not be considered a replication transaction.

Source: Laws 1991, LB 237, § 49; Laws 1997, LB 273, § 22; Laws 2005, LB 119, § 17.

44-5152 Securities Valuation Office; designated obligations; limitation.

(1) In addition to investments otherwise authorized under the Insurers Investment Act and subject to the limitations in subsections (2) and (3) of this section, an insurer may invest in obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2) Subject to the limitation in subsection (3) of this section, an insurer shall not acquire, directly or indirectly through an investment subsidiary, investments in obligations:

(a) Having a 4 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed four percent of the insurer's admitted assets;

(b) Having a 5 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed two percent of the insurer's admitted assets; and

(c) Having a 6 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed one percent of the insurer's admitted assets.

(3) An insurer shall not acquire, directly or indirectly through an investment subsidiary, investments under this section if, as a result of and giving effect to the investment, the aggregate amount would exceed fifteen percent of the insurer's admitted assets.

Source: Laws 1991, LB 237, § 52; Laws 1997, LB 273, § 24; Laws 2007, LB117, § 19.

44-5153 Additional authorized investments.

(1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) In addition to the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) In addition to the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written

premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(5) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Source: Laws 1991, LB 237, § 53; Laws 1997, LB 273, § 25; Laws 2005, LB 119, § 18; Laws 2007, LB117, § 20.

44-5154 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Insurers Investment Act, including, but not limited to, establishing standards for qualification as custodians for insurer investments and establishing requirements for custody agreements.

Source: Laws 1991, LB 237, § 54; Laws 2005, LB 119, § 19.

ARTICLE 53

HEALTH INSURANCE ACCESS

Section
44-5305. Policy or contract; eligibility.

44-5305 Policy or contract; eligibility.

(1) An uninsured access coverage policy or contract shall limit eligibility to individuals or families:

(a) Whose gross income does not exceed one hundred eighty-five percent of income standards prescribed by the federal Office of Management and Budget income poverty guidelines in effect on February 1, 1991, or as may be later amended; and

(b) Who are not eligible for medicare or any other medical assistance program, including, but not limited to, the program established pursuant to the Medical Assistance Act.

(2) Every uninsured access coverage policy or contract shall specify the time period, not exceeding six months, for which any applicant is required to demonstrate eligibility based upon the income standards of such policy or contract, and every such policy or contract shall specify what constitutes sufficient verification of income at the time of application and annual renewals.

(3) If an individual's or a family's income exceeds the income eligibility standards of the uninsured access coverage policy or contract and such individ-

ual or family is thereby no longer eligible for continued coverage, the uninsured access coverage policy or contract shall allow a transfer to a designated type of individual policy or contract without evidence of insurability and without interruption in coverage subject to payment of premiums. Each uninsured access coverage policy or contract shall specify the type of individual policy or contract to which an insured person may transfer.

Source: Laws 1991, LB 419, § 33; Laws 2006, LB 1248, § 65.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 55
SURPLUS LINES INSURANCE

Section
44-5501. Act, how cited.
44-5502. Terms, defined.
44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.
44-5505. Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.
44-5508. Surplus lines licensee; solvency requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.
44-5515. Taxes; form.

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.

44-5502 Terms, defined.

For purposes of the Surplus Lines Insurance Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) Insurer has the same meaning as in section 44-103;

(4) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103; and

(5) Industrial insured means an insured that:

(a) Procures the insurance of any risk or risks other than sickness and accident insurance and life and annuity contracts, has fifty full-time employees, and has aggregate annual premiums for insurance on all risks other than workers' compensation insurance that total at least one hundred thousand dollars; and

(b) Uses, to procure such insurance, the services of a salaried full-time employee who counsels or advises his or her employer regarding the insurance interests of the employer or the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

(1) No person, other than an industrial insured, shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23.

44-5505 Nonadmitted insurer; surplus lines licensee; record of business; contents; how kept.

Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision (3) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) the name and address of the insured, (10) a brief and general description of the risk or exposure insured and where located, (11) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and (12) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for

not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Source: Laws 1913, c. 154, § 25, p. 409; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 588; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-141; Laws 1978, LB 836, § 3; Laws 1989, LB 92, § 31; R.S.Supp.,1990, § 44-141; Laws 1992, LB 1006, § 5; Laws 2005, LB 119, § 20.

44-5508 Surplus lines licensee; solvency requirements; duties of licensee; violations; penalty; nonadmitted insurer; requirements.

(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall ascertain the financial condition of each insurer before such licensee places any insurance with or procures any insurance from such insurer. If requested by the director, the licensee shall provide a copy of the current annual statement certified and sworn to by such insurer.

(2) No surplus lines licensee shall knowingly or without proper investigation place any insurance with or procure any insurance from any nonadmitted foreign or alien insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the requirements of surplus, capital, and reserves placed on admitted insurers which write the same kinds of insurance.

(3) In addition to the requirements of subsection (2) of this section, no surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted alien insurer unless such insurer (a) maintains in the United States a trust fund in a qualified United States financial institution as defined in subsection (2) of section 44-416.08 in an amount not less than two million five hundred thousand dollars for the protection of policyholders in the United States, consisting of cash in United States currency, readily marketable securities, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in subsection (1) of section 44-416.08, and such trust fund shall have an expiration date which at no time shall be less than five years, or (b) is approved by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners, and the director, in his or her discretion, has not independently determined such insurer to be in an unsound financial condition.

(4) No surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters unless such group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group and such trust complies with the terms and conditions established in subsection (3) of this section for nonadmitted alien insurers.

(5) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

(6)(a) No nonadmitted foreign or alien insurer shall transact business under the act if it does not comply with the surplus, capital, and reserves requirements of subsection (2) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of subdivision (3)(a) or (b) of this section.

(c) No nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters shall transact business under the act if it does not comply with the requirements of subsection (4) 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.

44-5515 Taxes; form.

Every industrial insured shall annually, on or before February 15, pay to the department a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers. Every industrial insured shall pay the fire insurance tax prescribed in section 81-523. The department shall prescribe a form for an industrial insured tax filing.

Source: Laws 2007, LB117, § 24.

ARTICLE 60

INSURERS RISK-BASED CAPITAL ACT

Section
44-6009. Negative trend, with respect to a life and health insurer, defined.
44-6016. Company action level event.

44-6009 Negative trend, with respect to a life and health insurer, defined.

Negative trend, with respect to a life and health insurer, means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the life risk-based capital instructions.

Source: Laws 1993, LB 583, § 21; Laws 1994, LB 978, § 36; Laws 1999, LB 258, § 14; Laws 2008, LB855, § 29.
Operative date July 18, 2008.

44-6016 Company action level event.

(1) Company action level event means any of the following events:

(a) The filing of a risk-based capital report by an insurer or a health organization which indicates that:

(i) The insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;

(ii) If a life and health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions;

(b) The notification by the director to the insurer or health organization of an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section unless the insurer or health organization challenges the adjusted risk-based capital report under section 44-6020; or

(c) If, pursuant to section 44-6020, the insurer or health organization challenges an adjusted risk-based capital report that indicates an event described in subdivision (1)(a) of this section, the notification by the director to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(2) In the event of a company action level event, the insurer or health organization shall prepare and submit to the director a risk-based capital plan which shall:

(a) Identify the conditions which contribute to the company action level event;

(b) Contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the company action level event;

(c) Provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years in the case of an insurer or at least the two succeeding years in the case of a health organization, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the insurer's or health organization's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, and mix of business and use of reinsurance, if any, in each case.

(3) The risk-based capital plan shall be submitted:

(a) Within forty-five days after the occurrence of the company action level event; or

(b) If the insurer or health organization challenges an adjusted risk-based capital report pursuant to section 44-6020, within forty-five days after the notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(4) Within sixty days after the submission by an insurer or a health organization of a risk-based capital plan to the director, the director shall notify the insurer or health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the director, unsatisfactory. If the

director determines that the risk-based capital plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination and may set forth proposed revisions which will render the risk-based capital plan satisfactory in the judgment of the director. Upon notification from the director, the insurer or health organization shall prepare a revised risk-based capital plan which may incorporate by reference any revisions proposed by the director. The insurer or health organization shall submit the revised risk-based capital plan to the director:

(a) Within forty-five days after the notification from the director; or

(b) If the insurer or health organization challenges the notification from the director under section 44-6020, within forty-five days after a notification to the insurer or health organization that the director has, after a hearing, rejected the insurer's or health organization's challenge.

(5) In the event of a notification by the director to an insurer or a health organization that the insurer's or health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the director may, at the director's discretion and subject to the insurer's or health organization's right to a hearing under section 44-6020, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer or domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the director shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner of any state in which the insurer or health organization is authorized to do business if:

(a) Such state has a law substantially similar to subsection (1) of section 44-6021; and

(b) The insurance commissioner of such state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in such state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(ii) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection (3) or (4) of this section.

Source: Laws 1993, LB 583, § 28; Laws 1994, LB 978, § 38; Laws 1999, LB 258, § 21; Laws 2008, LB855, § 30.
Operative date July 18, 2008.

ARTICLE 61

DEMUTUALIZATION AND REORGANIZATION OF MUTUAL COMPANIES

(b) MUTUAL INSURANCE HOLDING COMPANY ACT

(b) MUTUAL INSURANCE HOLDING COMPANY ACT

44-6122 Act, how cited.

Sections 44-6122 to 44-6143 shall be known and may be cited as the Mutual Insurance Holding Company Act.

Source: Laws 1997, LB 740, § 1; Laws 1999, LB 259, § 13; Laws 2005, LB 119, § 22.

44-6125 Domestic mutual insurer; foreign insurer; transfer domicile; reorganization authorized; effect; holding company; treatment.

(1) A domestic mutual insurer, upon approval of the director, may reorganize (a) by forming a mutual insurance holding company, (b) by merging its policyholders' membership interests into the mutual insurance holding company, and (c) by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(2) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into an existing mutual insurance holding company formed under subsection (1) of this section and by continuing the mutual insurer's corporate existence as a stock insurer subsidiary of the mutual insurance holding company.

(3) All of the initial shares of the capital stock of a reorganized stock insurer which has reorganized as described in subsection (1) or (2) of this section shall be issued to the mutual insurance holding company or to one or more intermediate stock holding companies.

(4) Policyholders of a domestic mutual insurer which has reorganized as described in subsection (1) or (2) of this section shall be members of the mutual insurance holding company and their voting rights shall be determined in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall provide its members with the same membership rights as were provided to policyholders of the mutual insurer immediately prior to reorganization. The reorganization shall not reduce, limit, or affect the number or identity of the policyholders who may become members of the mutual insurance holding company or secure for individuals comprising management any unfair advantage through or connected with the reorganization.

(5) If an insurer which is organized under the laws of another state transfers its domicile to this state in accordance with section 44-161 and is a direct or indirect subsidiary of a mutual insurance holding company organized under the laws of such other state, then, in connection with the transfer of the domicile of such insurer, upon approval of the director of a plan of merger and transfer, the foreign mutual insurance holding company may form a mutual insurance holding company under this section, and the foreign mutual insurance holding company may merge into such domestic mutual insurance holding company simultaneously with the transfer of domicile of the insurer to this state. Until the merger takes effect, the foreign mutual insurance holding company shall be the sole member of the domestic mutual insurance holding company. When the merger takes effect, the separate existence of the foreign mutual insurance holding company shall cease, the domestic mutual insurance holding company shall survive and have all the assets and liabilities formerly held by the foreign mutual insurance holding company, all of the members of the foreign mutual insurance holding company shall become members of the domestic mutual insurance holding company, policyholders of the insurer shall be members of the domestic mutual insurance holding company, and their voting rights shall

be determined in accordance with the articles of incorporation and bylaws of the domestic mutual insurance holding company. After the transfer and merger take effect, for purposes of the Mutual Insurance Holding Company Act, the insurer shall be deemed to be a reorganized stock insurer. If the foreign mutual insurance holding company owns a majority of the voting stock of a stock holding company organized under the laws of another state that in turn owns all of the voting stock of the insurer, then the plan of merger and transfer may provide that the stock holding company shall continue as a corporation organized under the laws of the other state.

(6)(a) A mutual insurance holding company or any intermediate stock holding company formed under the Mutual Insurance Holding Company Act shall not be authorized to transact the business of insurance.

(b) A mutual insurance holding company formed under the act shall not issue stock.

(c) The director shall have jurisdiction over a mutual insurance holding company and any intermediate stock holding company to ensure that policyholder interests are protected.

(d) A mutual insurance holding company and any intermediate stock holding company shall be treated as domestic insurers subject to the Insurers Demutualization Act, the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, Chapter 44, article 2, and section 44-301, except that a foreign intermediate stock holding company shall not be subject to Chapter 44, article 2, and section 44-301.

(e) Except with the approval of the director, the aggregate pledges and encumbrances of a mutual insurance holding company's assets shall not affect more than forty-nine percent of the mutual insurance holding company's stock in an intermediate stock holding company or a reorganized stock insurer.

(f) At least fifty percent of the net worth of a mutual insurance holding company, as determined by generally accepted accounting practices, shall be invested in insurers or any other subsidiaries or investments authorized by the Insurance Holding Company System Act.

(g) If any proceeding under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act is brought against a reorganized stock insurer, the mutual insurance holding company and intermediate stock holding company shall become parties to the proceedings. All of the assets of the mutual insurance holding company are deemed assets of the estate of the reorganized stock insurer to the extent necessary to satisfy policy claims against the reorganized stock insurer.

(h) No distribution to members of a mutual insurance holding company may occur without prior written approval of the director and only upon the director's satisfaction that such distribution is fair and equitable to policyholders as members of the mutual insurance holding company.

(i) No solicitation for the sale of the stock of an intermediate stock holding company or a reorganized stock insurer may be made without the director's prior written approval.

(j) A mutual insurance holding company or an intermediate stock holding company shall not voluntarily dissolve without the approval of the director.

Source: Laws 1997, LB 740, § 4; Laws 2004, LB 1047, § 20; Laws 2005, LB 119, § 23.

Cross References

Insurance Holding Company System Act, see section 44-2120.
Insurers Demutualization Act, see section 44-6101.
Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4862.

44-6143 Expansion of business; activities authorized; requirements.

(1) A mutual insurance holding company or an intermediate stock holding company may engage in actions and activities related to expanding the business of any company into other insurance, insurance-related, and financial services businesses. Any such expansion may be accomplished through acquisition, merger, consolidation, strategic alliance, joint venture, or other business combination. A mutual insurance holding company may:

(a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company formed under the laws of the State of Nebraska or any similar entity or organization formed under the laws of any other state;

(b) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes as a mutual insurance holding company under the laws of the State of Nebraska or the laws of its state of organization;

(c) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or intermediate stock insurance company subsidiary of the mutual insurance holding company; or

(e) Acquire the stock or assets of any other person to the same extent as would be permitted for a mutual insurance company.

(2) A plan and agreement for merger or consolidation in accordance with subsection (1) of this section shall be submitted to and approved by two-thirds of the members of each domestic mutual insurance holding company or mutual insurance company involved in the merger or consolidation who vote either in person or by proxy thereon at meetings called for such purposes pursuant to such reasonable notice and procedure as has been approved by the director.

(3) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the director and approved by the director.

(4) All of the initial shares of the capital stock of the reorganized stock insurer shall be issued either to the mutual insurance holding company or to an intermediate stock holding company that is a subsidiary of the mutual insurance holding company. The membership interests of the policyholders of the reorganized stock insurer shall become membership interests in the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation. Policyholders of the reorganized stock insurer shall be members of the mutual insurance holding company in accordance with the plan and agreement of merger or consolidation and the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times directly or indirectly own a

majority of the voting shares of the capital stock of any reorganized stock insurer.

Source: Laws 2005, LB 119, § 24.

ARTICLE 65
INTERSTATE INSURANCE RECEIVERSHIP COMPACT

Section
44-6501. Repealed. Laws 2006, LB 875, § 24.

44-6501 Repealed. Laws 2006, LB 875, § 24.

ARTICLE 66
INSURANCE FRAUD

Section
44-6603. Terms, defined.
44-6604. Fraudulent insurance acts; enumerated.

44-6603 Terms, defined.

For purposes of the Insurance Fraud Act:

(1) Department means the Department of Insurance;

(2) Director means the Director of Insurance;

(3) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the director. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(4) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 3; Laws 1997, LB 272, § 2; Laws 2002, LB 547, § 2; Laws 2008, LB855, § 31.
Operative date July 18, 2008.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.
Intergovernmental Risk Management Act, see section 44-4301.

44-6604 Fraudulent insurance acts; enumerated.

For purposes of the Insurance Fraud Act, a person or entity commits a fraudulent insurance act if he or she:

(1) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support

of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(2) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(3) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(4) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(5) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(6) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(7) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(8) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the department;

(9) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;

(10) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(11) Willfully collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits.

Source: Laws 1995, LB 385, § 4; Laws 1997, LB 272, § 3; Laws 2002, LB 547, § 3; Laws 2008, LB855, § 32.
Operative date July 18, 2008.

ARTICLE 70
HEALTH CARE PROFESSIONAL CREDENTIALING VERIFICATION ACT

Section
44-7006. Health carrier; credentialing verification duties.

44-7006 Health carrier; credentialing verification duties.

(1) A health carrier shall:

(a) Establish written policies and procedures for credentialing verification of all health care professionals with whom the health carrier contracts and apply these standards consistently;

(b) Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the health carrier or other designated health care professional shall have responsibility for, and shall participate in, credentialing verification;

(c) Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

(d) Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

(e) Retain all records and documents relating to a health care professional's credentialing verification process for at least five years; and

(f) Keep confidential all information obtained in the credentialing verification process except as otherwise provided by law.

(2) Nothing in the Health Care Professional Credentialing Verification Act shall be construed to require a health carrier to select a provider as a participating provider solely because the provider meets the health carrier's credentialing verification standards or to prevent a health carrier from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

(3) The policies and procedures for credentialing verification shall be available for review by the director, and, in the case of a health maintenance organization, shall also be available for review by the chief medical officer, if one is appointed pursuant to section 81-3115, and if not, then the Director of Public Health.

Source: Laws 1998, LB 1162, § 31; Laws 2007, LB296, § 198.

ARTICLE 71

MANAGED CARE PLAN NETWORK ADEQUACY ACT

Section
44-7107. Intermediaries.

44-7107 Intermediaries.

(1) A contract between a health carrier and an intermediary shall satisfy all the requirements contained in this section.

(2)(a) Intermediaries and participating providers with whom they contract shall comply with all the applicable requirements of section 44-7106.

(b) A health carrier's statutory responsibility to monitor the offering of covered benefits to covered persons shall not be delegated or assigned to the intermediary.

(c) A health carrier shall have the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the health carrier's covered persons.

(d) A health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all intermediary subcontracts, including the right to make copies to

facilitate regulatory review, upon twenty days' prior written notice from the health carrier. A health carrier may meet the requirements of this subdivision by maintaining a copy of the intermediary health care subcontract forms used by its intermediaries, and if the health carrier does so, the health carrier shall also maintain a copy of any portion of an intermediary health care subcontract which substantially differs from the intermediary health care subcontract form in subject areas other than reimbursement.

(e) If applicable, an intermediary shall transmit utilization documentation and claims paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons.

(f) If applicable, an intermediary shall maintain the books, records, financial information, and documentation of health care services provided to covered persons at its principal place of business in the state and preserve them for five years in a manner that facilitates regulatory review.

(g) An intermediary shall allow the director and a health maintenance organization shall allow the director and the Department of Health and Human Services access to the intermediary's books, records, financial information, and any documentation of health care services provided to covered persons, as necessary to determine compliance with the Managed Care Plan Network Adequacy Act.

(h) A health carrier shall have the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services.

Source: Laws 1998, LB 1162, § 45; Laws 2007, LB296, § 199.

ARTICLE 72

QUALITY ASSESSMENT AND IMPROVEMENT ACT

Section
44-7206. Quality assessment; infrastructure and disclosure systems.

44-7206 Quality assessment; infrastructure and disclosure systems.

A health carrier that provides managed care plans shall develop and maintain the infrastructure and disclosure systems necessary to measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of managed care plans offered by the health carrier. A health carrier shall:

(1) Establish a system designed to assess the quality of health care provided to covered persons and appropriate to the types of managed care plans offered by the health carrier. The system shall include systematic collection, analysis, and reporting of relevant data in accordance with statutory and regulatory requirements;

(2) Communicate findings in a timely manner to applicable regulatory agencies, providers, and consumers as provided in section 44-7209;

(3) Report to the appropriate licensing authority any persistent pattern of problematic care provided by a provider that is sufficient to cause the health carrier to terminate or suspend contractual arrangements with the provider. A

health carrier acting in good faith shall be granted immunity from any cause of action under state law in making the report; and

(4) Develop a written description of the quality assessment program available for review by the director, which shall include a signed certification by a corporate officer of the health carrier that the filing meets the requirements of the Quality Assessment and Improvement Act. The written description of the quality assessment program of a health maintenance organization shall also be available for review by the Department of Health and Human Services.

Source: Laws 1998, LB 1162, § 56; Laws 2007, LB296, § 200.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section
44-7306. Grievance register.

44-7306 Grievance register.

(1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a first-level review of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. A request for a second-level review of an adverse determination shall be considered a grievance for purposes of the grievance register. For each grievance required to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

(a) A general description of the reason for the grievance;

(b) Date received;

(c) Date of each review or hearing;

(d) Resolution at each level of the grievance;

(e) Date of resolution at each level; and

(f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

Source: Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section
44-7504. Terms, defined.
44-7506. Rating systems and prospective loss costs; filing required.
44-7508.01. Policy forms and related rules of attachment; filing; contents; failure to file; effect.

44-7504 Terms, defined.

For purposes of the Property and Casualty Insurance Rate and Form Act:

(1) Advisory organization means any entity, including its affiliates or subsidiaries, which (a) has majority ownership or control by two or more insurers and assists two or more insurers in activities related to ratemaking, the promulgation of policy forms, or related matters or (b) makes the same prospective loss cost or policy form filings on behalf of or to be available for two or more insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Advisory organization does not include joint reinsurance pools, joint underwriting pools, or insurers engaged in joint underwriting;

(2) Classification means the process of grouping insureds with similar loss or expense characteristics so that differences in losses and expenses may be recognized;

(3) Director means the Director of Insurance;

(4) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 44-7515;

(5) Expense means that portion of a rate attributable to acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;

(6) Experience rating plan means a rating formula and related procedures that use past loss experience of an individual policyholder to forecast future losses by measuring the policyholder's loss experience against the expected losses for policyholders in that classification to produce a prospective premium credit, debit, or unity modification;

(7) Joint reinsurance pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the reinsurance of risks written by one or more member insurers and reinsured by one or more other member insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint reinsurance pool may operate through an association, syndicate, or other arrangement;

(8) Joint underwriting means a voluntary arrangement established on an individual risk basis by which two or more insurers jointly contract to provide coverage for an insured. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Joint underwriting does not include any arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity;

(9) Joint underwriting pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the sharing of risks written as their direct obligations according to a predetermined basis and the insurance remains the direct obligation of the pool participants. For purposes of this

subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint underwriting pool may operate through an association, syndicate, or other arrangement;

(10) Loss adjustment expense means the expense incurred by an insurer in the course of settling claims;

(11) Policy form means all policies, certificates, or other contracts providing insurance coverage. Policy form includes bonds and includes riders, endorsements, or other amendments to the policy form;

(12) Premium means the cost of insurance to the policyholder after all audit adjustments have been made and any dividends payable have been subtracted;

(13) Prospective loss cost means that portion of a rate intended to provide for expected losses and loss adjustment expenses. Prospective loss costs may provide for anticipated special assessments. Prospective loss costs do not include provisions for profits, dividends, or expenses other than loss adjustment expenses;

(14) Rating system means the information needed to determine the applicable rate or premium including rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, payment plans, rating plans or rules, anniversary rating date rules, and other similar information. Rating system does not include dividend rating plans or other provisions for the possible payment of dividends if such dividends are declared by the insurer's board of directors and are not guaranteed;

(15) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Workers' Compensation Trust Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 44-3,158 or 44-7528, and similar assessments. Special assessments are not expenses or losses;

(16) Statistical agent means an entity that, for the purpose of fulfilling the statistical reporting obligations of two or more insurers under the act, collects or compiles statistics from two or more insurers or provides reports developed from these statistics to the director. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer; and

(17) Supporting information means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in developing a rating system, and any other information required by the director to be filed.

Source: Laws 2000, LB 1119, § 4; Laws 2001, LB 4, § 1; Laws 2007, LB117, § 25.

44-7506 Rating systems and prospective loss costs; filing required.

(1) All rating systems and prospective loss costs shall be filed with the director in accordance with section 44-7508, except that filings for the following shall be filed in accordance with sections 44-7510 and 44-7511:

(a) Filings made by advisory organizations;

(b) Medical professional liability insurance;

(c) Insurance in noncompetitive markets as determined pursuant to section 44-7507;

(d) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;

(e) Insurance written by joint underwriting pools or joint reinsurance pools;

(f) Insurance written in an assigned risk plan; and

(g) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2)(a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508 that have failed to meet the filing standards contained in that section with such frequency as to indicate a general business practice that disregards the requirements of that section, the director shall order that the insurer's filings be made subject to the requirements of sections 44-7510 and 44-7511.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2)(a) of this section, demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508 without the need for the director to request that the original filings be amended, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(c) For insurers whose rating system filings that would otherwise be subject to this section have been made subject to the prior approval requirements of section 44-7511 through the application of this subsection, the percentage rating flexibilities provided in section 44-7509 shall apply to such rating system filings made by such insurers once the rating system filing has been approved pursuant to section 44-7511.

Source: Laws 2000, LB 1119, § 6; Laws 2005, LB 119, § 25.

Cross References

Administrative Procedure Act, see section 84-920.

44-7508.01 Policy forms and related rules of attachment; filing; contents; failure to file; effect.

(1) All policy forms and related rules of attachment shall be filed with the director in accordance with section 44-7508.02, except that an insurer may at its option file policy forms and related rules of attachment in accordance with section 44-7513 and filings for the following shall be filed in accordance with section 44-7513:

(a) Filings made by advisory organizations;

(b) Workers' compensation and employers liability insurance;

(c) Excess workers' compensation and employers liability insurance;

(d) Medical professional liability insurance;

(e) Insurance in noncompetitive markets as determined pursuant to section 44-7507;

(f) Liability and physical damage coverages relating to the rental of private passenger automobiles on a nonfleet basis;

(g) Insurance written by joint underwriting pools or joint reinsurance pools;

(h) Insurance written in an assigned risk plan; and

(i) Insurance covering risks of a personal nature written for business entities if the costs for the insurance are charged to individuals. This does not include coverage provided without a separate charge by business entities for their customers.

(2)(a) If the director, after notice and hearing in accordance with the Administrative Procedure Act, finds that an insurer has made filings pursuant to section 44-7508.02 that have failed to meet the filing standards contained in such section with such frequency as to indicate a general business practice that disregards the requirements of such section or finds that the insurer committed one or more egregious acts relating to the filing standards, the director shall order that the insurer's filings be made subject to the requirements of section 44-7513.

(b) Upon application by an insurer affected by an order issued pursuant to subdivision (2)(a) of this section demonstrating that its filings made subsequent to the order have been in compliance with section 44-7508.02 without the need for the director to request that the original filings be amended, the director may vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

Source: Laws 2003, LB 216, § 19; Laws 2005, LB 119, § 26.

Cross References

Administrative Procedure Act, see section 84-920.

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 or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 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 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 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.
Operative date July 18, 2008.

44-7509 Premium adjustments.

(1) For medical professional liability insurance and for insurance subject to section 44-7508, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

(a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured;

(b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; and

(c) The rate adjustment cannot apply to (i) 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 or (ii) insurance covering farms and ranches, including crop insurance.

(2) If the director finds after a hearing that (a) the utilization of this section by the insurance industry has produced a significant number of rate modifications at or near the upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at and near the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, broaden the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508.

(3) If the director finds after a hearing that modifiers at or near the upper or lower limits of the allowable range of modification are not predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508, but such reduction shall not be to less than plus or minus twenty-five percent.

Source: Laws 2000, LB 1119, § 9; Laws 2002, LB 1139, § 50; Laws 2005, LB 119, § 28.

Cross References

Unfair Discrimination Against Subjects of Abuse in Insurance Act, see section 44-7401.

44-7511 Rating systems; filing requirements for lines subject to prior approval; hearings.

(1) Each insurer to which this section applies as provided in section 44-7506 shall file with the director every rating system and every modification of such rating system that it proposes to use. 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:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 44-7515; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(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 filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file or pending that applies to some or all of these same risks, the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced when the approval of a filing

will result in the replacement or alteration of previously approved rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been approved by the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the 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 rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6)(a) Except as otherwise provided in subdivision (6)(b) of this section for medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written application of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk, filed with and approved by the director.

(b) For medical professional liability insurance, a rate or premium in excess of that provided by a filing otherwise applicable may be used for any specific medical professional upon the prior written consent of the medical professional that describes its unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that medical professional's rate classification. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. The director shall monitor such rate applications to assure compliance with this subdivision. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for medical professionals that do not possess unusual or extrahazardous exposures, or that otherwise fails to comply with this subdivision, shall be subject to prior approval pursuant to subdivision (6)(a) of this section. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subdivision, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems

affected by such rules and regulations meet the standards contained in this section.

(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 if:

(a) The filing fails to meet the standards contained in section 44-7510;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents; or

(d) The filing discriminates between risks based on subjective factors, except that (i) an experience rating plan may use loss reserves without being considered as subjective and (ii) a fire insurance rating plan applying to commercial risks filed for the sole use by an advisory organization may be approved even though it contains subjective rating factors.

(10) Within thirty days after receipt, the director shall approve a filing that meets 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 rating system 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 rating system or aspect of a rating system 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, § 11; Laws 2002, LB 1139, § 52; Laws 2005, LB 119, § 29.

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 or as provided by rules and regulations adopted and promulgated pursuant to section 44-7514 or 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.

ARTICLE 76

MULTIPLE EMPLOYER WELFARE ARRANGEMENT ACT

Section
44-7613. Annual financial statement; fee; actuarial statement; certificate of compliance.

44-7613 Annual financial statement; fee; actuarial statement; certificate of compliance.

(1) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, each multiple employer welfare arrangement holding a certificate of registration shall file with the

director a financial statement, attested to by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees, and accompanied by a fee of two hundred dollars. The director shall review the financial statement and shall require additional filings as the director finds reasonably necessary to assure the legitimacy and the financial integrity of the multiple employer welfare arrangement.

(2) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, a statement from a qualified actuary that the rates charged and reserves, both (a) incurred and (b) incurred but not reported, regarding sufficiency to pay claims and associated expenses for the health benefit plan shall be obtained and given to the director. The actuarial statement shall include a confirmation that the stop-loss insurance policy required by section 44-7609 is in force. The actuarial statement shall meet the requirements of any rules or regulations which shall be adopted and promulgated by the director.

(3) On an annual basis and within ninety days after the last day of the fiscal year of a multiple employer welfare arrangement, each multiple employer welfare arrangement holding a certificate of registration shall file with the director a certificate of compliance signed by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees, certifying that the multiple employer welfare arrangement, to the best of their knowledge, information, and belief, has been conducted in accordance with applicable provisions of Nebraska law and rules and regulations relating to multiple employer welfare arrangements.

Source: Laws 2002, LB 1139, § 13; Laws 2008, LB855, § 51.
Operative date July 18, 2008.

ARTICLE 78

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Section
44-7801. Interstate Insurance Product Regulation Compact; ratification.
44-7802. Representative of state.

44-7801 Interstate Insurance Product Regulation Compact; ratification.

The State of Nebraska ratifies the following Interstate Insurance Product Regulation Compact:

Article I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

2. To develop uniform standards for insurance products covered under the Compact;

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;

6. To create the Interstate Insurance Product Regulation Commission; and

7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. DEFINITIONS

For purposes of this Compact:

1. ''Advertisement'' means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.

2. ''Bylaws'' mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.

3. ''Compacting State'' means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

4. ''Commission'' means the ''Interstate Insurance Product Regulation Commission'' established by this Compact.

5. ''Commissioner'' means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.

6. ''Domiciliary State'' means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.

7. ''Insurer'' means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.

8. ''Member'' means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.

9. ''Non-compacting State'' means any State which is not at the time a Compacting State.

10. ''Operating Procedures'' mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.

11. ''Product'' means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.

12. ''Rule'' means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.

13. ''State'' means any state, district or territory of the United States of America.

14. ''Third-Party Filer'' means an entity that submits a Product filing to the Commission on behalf of an Insurer.

15. ''Uniform Standard'' means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

Article III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish a joint public agency known as the ''Interstate Insurance Product Regulation Commission.'' Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.

2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

Article IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, provided, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation

adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission;

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

7. To bring and prosecute legal proceedings or actions in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;

17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

18. To provide for dispute resolution among Compacting States;

19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

21. To establish a budget and make expenditures;

22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

Article V. ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

i. Establishing the fiscal year of the Commission;

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;

iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and

iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

iii. Overseeing the offices of the Commission; and

iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.

b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

5. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that

nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

Article VII. RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its

intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. ''Opt out'' shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the

opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

Article VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating

Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

Article IX. DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

Article X. PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.

2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

Article XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

Article XII. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

2. The Commission shall collect a filing fee from each Insurer and Third Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

4. The Commission shall be exempt from all taxation in and by the Compacting States.

5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request provided, however, that any workpapers related to any internal or independent audit and any information regarding the privacy of individuals and

insurers' proprietary information, including trade secrets, shall remain confidential.

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

Article XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

Article XIV. WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact (''Withdrawing State'') by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.

c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing

State for the prospective disapproval of products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

a. If the Commission determines that any Compacting State has at any time defaulted (''Defaulting State'') in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

Article XV. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

Article XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.

b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual States shall be subject to the laws of those States.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

Source: Laws 2005, LB 119, § 36.

44-7802 Representative of state.

The Director of Insurance is hereby designated to serve as the representative of this state to the Interstate Insurance Product Regulation Commission.

Source: Laws 2005, LB 119, § 37.

ARTICLE 79

PROPERTY AND CASUALTY ACTUARIAL OPINION ACT

Section

44-7901 Act, how cited.

Sections 44-7901 to 44-7903 shall be known and may be cited as the Property and Casualty Actuarial Opinion Act.

Source: Laws 2005, LB 119, § 39.

44-7902 Statement of Actuarial Opinion; filing; supporting documents; appointed actuary; immunity.

(1) Beginning January 1, 2007, every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled Statement of Actuarial Opinion. This opinion shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions.

(2)(a) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Statement of Actuarial Opinion required in subsection (1) of this section.

(b) A property and casualty insurance company authorized to do business in this state but not domiciled in this state shall provide the actuarial opinion summary to the Director of Insurance upon request.

(3)(a) An actuarial report and underlying workpapers as required by the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions shall be prepared to support each Statement of Actuarial Opinion.

(b) If the insurance company fails to provide a supporting actuarial report or workpapers at the request of the director or the director determines that the supporting actuarial report or workpapers provided by the insurance company is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers.

(4) The appointed actuary shall not be liable for damages to any person, other than the insurance company or the director, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

Source: Laws 2005, LB 119, § 40.

44-7903 Statement of Actuarial Opinion; supporting documents; disclosure allowed; when.

(1) The Statement of Actuarial Opinion shall be provided with the annual statement in accordance with the appropriate National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions and shall be a public document.

(2)(a) Documents, materials, or other information in the possession or control of the Department of Insurance that are considered an actuarial report,

workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the Director of Insurance in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(b) This section shall not be construed to limit the director's authority to release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the director for preserving the confidentiality of the documents, nor shall this section be construed to limit the director's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the director's official duties.

(3) Neither the director nor any person who received documents, materials, or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (2) of this section.

(4) The director:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (2) of this section with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality; and

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain information received pursuant to this subdivision as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Source: Laws 2005, LB 119, § 41.

ARTICLE 80
HEALTH CARE PROMPT PAYMENT ACT

Section

44-8001 Act, how cited.

Sections 44-8001 to 44-8010 shall be known and may be cited as the Health Care Prompt Payment Act.

Source: Laws 2005, LB 389, § 1.

44-8002 Terms, defined.

For purposes of the Health Care Prompt Payment Act:

(1) Claim form means an insurer's standard printed or electronic transaction form that complies with the standards issued by the Secretary of the United States Department of Health and Human Services or, if an insurer does not have a standard printed or electronic transaction form, any form which complies with such standards;

(2) Clean claim means a claim for payment of health care services that is submitted by a Nebraska health care provider to an insurer on a claim form with all required fields completed with information to adjudicate the claim in accordance with any published filing requirements of the insurer;

(3) Director means the Director of Insurance;

(4) Insurer means an entity that contracts to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a prepaid limited health service organization, a prepaid dental service corporation, a participant in an insurance arrangement as defined in section 44-4105, or any other entity providing a plan of health insurance, health benefits, or health care services. Insurer does not include the medical assistance program established pursuant to the Medical Assistance Act, a property and liability insurer, a motor vehicle insurer, a workers' compensation insurer, a risk management pool, or a self-insured employer who contracts for services to be provided through a managed care plan certified pursuant to section 48-120.02;

(5) Prompt payment act compliance statement means a certification made in good faith by an insurer that, during the twenty-four-month period ending on the preceding June 30, it paid, denied, or settled more than ninety percent of its clean claims within the time periods set forth in subsections (1) and (2) of section 44-8004;

(6) Repricer means an entity that receives claims from health care providers and submits them to insurers after adjudicating or repricing such claims; and

(7) Unfair payment pattern means any of the following patterns of conduct:

(a) Engaging in a demonstrable and unjust pattern of reviewing or processing complete and accurate claims that results in payment delays;

(b) Engaging in a demonstrable and unjust pattern of reducing the amount of payment or denying complete and accurate claims;

(c) Repeated failure to pay the uncontested portions of a claim within the time periods specified in section 44-8004; or

(d) Failing on a repeated basis to pay the interest when due on claims pursuant to section 44-8005.

Source: Laws 2005, LB 389, § 2; Laws 2006, LB 1248, § 66.

Cross References

Medical Assistance Act, see section 68-901.

44-8003 Claim; date of receipt; rebuttable presumption.

If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

Source: Laws 2005, LB 389, § 3.

44-8004 Action on claim; deadline.

(1) A clean claim shall be paid, denied, or settled within thirty calendar days after receipt by the insurer if submitted electronically and within forty-five calendar days after receipt if submitted in a form other than electronically.

(2) If the resolution of a claim requires additional information, the insurer shall, within thirty calendar days after receipt of the claim, give the health care provider, policyholder, insured, or patient, as appropriate, a full explanation in writing of what additional information is needed to resolve the claim, including any additional medical or other information related to the claim. The applicable time period set forth in subsection (1) of this section shall be tolled as of the date the additional information is requested until the date all such additional information necessary to resolve the claim is received. The person receiving a request for such additional information shall submit all additional information requested by the insurer within thirty calendar days after receipt of such request. After such person has provided all such additional information necessary to resolve the claim, the claim shall be paid, denied, or settled by the insurer within the remaining applicable time period set forth in subsection (1) of this section. Failure to furnish additional information within the time period required shall not invalidate or reduce the claim if it was not reasonably possible to give such information within such time period. The insurer may deny a claim if a health care provider receives a request for additional information and fails to submit additional information requested under this subsection.

(3) For purposes of subsection (1) of this section, a clean claim shall not include a claim:

(a) For which the insurer needs additional information in order to resolve one or more issues concerning coverage, eligibility, coordination of benefits, investigation of preexisting conditions, subrogation, determination of medical necessity, or the use of unlisted procedural codes; or

(b) For which the insurer has a reasonable belief supported by specific information that the claim has been submitted fraudulently.

(4) If a claim is submitted to a repricer, the time periods for payment, denial, or settlement of such claims set forth in this section shall commence upon receipt of the claim by the repricer.

Source: Laws 2005, LB 389, § 4.

44-8005 Interest; rate; payment.

(1) An insurer that fails to pay, deny, or settle a clean claim in accordance with the time periods set forth in subsection (1) of section 44-8004 or to take other required action within the time periods set forth in subsection (2) of section 44-8004 shall pay interest at the rate of twelve percent per annum on the total amount ultimately allowed on the claim, accruing from the date payment was due pursuant to section 44-8004.

(2) To the extent that interest is not paid concurrently with the claim, it may be paid on a quarterly basis or when the aggregate interest for a health care provider exceeds ten dollars.

Source: Laws 2005, LB 389, § 5.

44-8006 Prompt payment act compliance statement; filing; effect; list available.

An insurer shall be exempt from the requirements of section 44-8005 during a calendar year when the insurer has a prompt payment act compliance statement on file with the director. Any insurer desiring to obtain the exemption shall file a prompt payment act compliance statement with the director not later than December 1 of the year prior to the exemption year. A list of insurers with prompt payment act compliance statements on file shall be publicly available from the director.

Source: Laws 2005, LB 389, § 6.

44-8007 Claims processing functions; delegation; requirements.

If an insurer delegates its claims processing functions to a third party, the delegation agreement shall provide that the third party shall consent to an examination and cooperate with that examination by the director and shall comply with the requirements of the Health Care Prompt Payment Act. Any delegation by the insurer shall not be construed to limit the insurer's responsibility to comply with the act.

Source: Laws 2005, LB 389, § 7.

44-8008 Compliance with act; unfair payment pattern; director; powers and duties; enforcement; penalty.

(1) An insured, a representative of an insured, or a health care provider acting on behalf of the insured may notify the director of activities related to an unfair payment pattern. The director shall compile a record of notices, and if it

appears to the director that an insurer, or a third party working on behalf of an insurer, may be engaged in an unfair payment pattern or that an insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, the director may examine and investigate the affairs of such insurer or third party, either as part of a regularly scheduled examination or as part of an examination called solely for the purposes of determining compliance with the Health Care Prompt Payment Act. The insurer shall reimburse the Department of Insurance for the expense of the examination of the insurer or third party working on behalf of the insurer in the same manner as provided for examination of insurance companies in the Insurers Examination Act.

(2) If as a result of an examination conducted under subsection (1) of this section, the director finds that any insurer doing business in this state is engaged in any unfair payment pattern, or that the insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, and that a proceeding in respect thereto would be in the public interest, the director shall issue and serve upon such insurer a statement of the charges in that respect and a notice of hearing thereon, which notice shall set a hearing date not less than ten days from the date of the notice.

(3) If, after a hearing conducted pursuant to the Administrative Procedure Act, the director finds that an insurer or a third party working on behalf of an insurer has engaged in an unfair payment pattern or that the insurer has filed a prompt payment act compliance statement that the insurer knows or has reason to know is false, the director shall reduce the findings to writing and shall issue and cause to be served upon the insurer a copy of the findings and an order requiring the insurer or any third party working on behalf of the insurer to cease and desist from engaging in the act or practice and the director may order any one or more of the following:

(a) Payment of a monetary penalty of not more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation was committed flagrantly and in conscious disregard of the Health Care Prompt Payment Act, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars;

(b) Suspension or revocation of the insurer's license or certificate of authority if the insurer knew or reasonably should have known it was in violation of the act; and

(c) Withdrawal of the insurer's prompt payment act compliance statement for such time as the director determines.

(4) Any insurer who violates a cease and desist order under subsection (3) of this section may, after notice and hearing and upon order of the director, be subject to:

(a) A monetary penalty of not more than thirty thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars; and

(b) Suspension or revocation of the insurer's license or certificate of authority.

Source: Laws 2005, LB 389, § 8.

Cross References

Administrative Procedure Act, see section 84-920.
Insurers Examination Act, see section 44-5901.

44-8009 Applicability of act.

The Health Care Prompt Payment Act does not apply to any individual or group policies that provide coverage for a specific disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. The act does not apply to any claim submitted before January 1, 2006.

Source: Laws 2005, LB 389, § 9.

44-8010 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Health Care Prompt Payment Act.

Source: Laws 2005, LB 389, § 10.

ARTICLE 81

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section

44-8101 Act, how cited.

Sections 44-8101 to 44-8107 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

Source: Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26.

44-8102 Purpose of act.

The purpose of the Nebraska Protection in Annuity Transactions Act is to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Source: Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27.

44-8103 Applicability of act.

The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange.

Source: Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28.

44-8104 Act; exemptions.

Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to recommendations involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Source: Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.

44-8105 Terms, defined.

For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity;

(2) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(3) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities; and

(4) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Source: Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30.

44-8106 Recommendation; purchase or exchange of annuity; requirements; insurer; duties.

(1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer.

(2) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance

producer is not involved, shall make reasonable efforts to obtain information concerning:

(a) The consumer's financial status;

(b) The consumer's tax status;

(c) The consumer's investment objectives; and

(d) Such other information used or considered to be reasonable in making recommendations to the consumer.

(3)(a) Except as provided under subdivision (3)(b) of this section, neither an insurance producer, nor an insurer if an insurance producer is not involved, shall have any obligation to a consumer under subsection (1) of this section related to any recommendation if the consumer:

(i) Refuses to provide relevant information requested by the insurance producer or insurer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or

(iii) Fails to provide complete or accurate information.

(b) If a consumer provides information as described in subdivision (3)(a) of this section, an insurance producer or insurer shall make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

(4)(a) An insurer shall:

(i) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the Nebraska Protection in Annuity Transactions Act is established and maintained by complying with subdivisions (4)(d) through (f) of this section; or

(ii) Establish and maintain a system to supervise recommendations.

(b) Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of the act.

(c) A general agent and independent agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the act or establish and maintain such a system. Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of the act.

(d) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision (4)(a) of this section with respect to insurance producers under contract with or employed by the third party.

(e) An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision (4)(d) of this section is performing the functions required under subdivision (4)(a) of this section and shall take such reasonable action to enforce the contractual obligation to perform the functions. An

insurer may comply with its obligation to make reasonable inquiry by doing the following:

(i) Obtaining annually a certification from a third-party senior manager that the manager represents that the third party is performing the required functions; and

(ii) Periodically selecting third parties contracting under subdivision (4)(d) of this section to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. Such third parties shall be selected based on reasonable selection criteria.

(f) An insurer shall have fulfilled its responsibilities under subdivision (4)(a) of this section if the insurer:

(i) Contracts with a third party pursuant to subdivision (4)(d) of this section; and

(ii) Complies with the requirements to supervise in subdivision (4)(e) of this section.

(g) An insurer, general agent, or independent agency is not required by subdivision (4)(a) or (b) of this section to:

(i) Review all insurance producer solicited transactions; or

(ii) Supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) A general agent or independent agency contracting with an insurer pursuant to subdivision (4)(d) of this section shall, when requested by the insurer pursuant to subdivision (4)(e) of this section, promptly give a certification as described in subdivision (4)(e)(i) of this section or give a clear statement that it is unable to meet the certification criteria.

(i) No person may provide a certification under subdivision (4)(e)(i) of this section unless:

(i) The person is a senior manager with responsibility for the delegated functions; and

(ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the ability of the Director of Insurance to enforce the act.

Source: Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31.

44-8107 Director of Insurance; powers; violations.

(1) The Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the Nebraska Protection in Annuity Transactions Act;

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to

take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (3)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered.

Source: Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 82
CAPTIVE INSURERS ACT

Section

44-8201 Act, how cited.

Sections 44-8201 to 44-8218 shall be known and may be cited as the Captive Insurers Act.

Source: Laws 2007, LB117, § 35.

44-8202 Purposes of act.

The purposes of the Captive Insurers Act are to set forth the procedures for organizing and regulating the operations of captive insurers within the State of Nebraska and to encourage integrity, financial solvency, and stability of captive insurers for the purpose of promoting the development of Nebraska businesses.

Source: Laws 2007, LB117, § 36.

44-8203 Terms, defined.

For purposes of the Captive Insurers Act:

(1) Affiliated entity means any entity that directly or indirectly controls, is controlled by, or is under common control with a captive insurer;

(2) Captive insurer means a domestic insurer authorized under the act to provide insurance and reinsurance to its parent, any affiliated entity, or both. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities;

(3) Control means the power to direct or cause the direction of the management and policies of an entity through ownership of voting securities;

(4) Director means the Director of Insurance; and

(5) Parent means an entity that directly or indirectly owns, controls, or holds, with power to vote, more than fifty percent of the outstanding voting securities or other ownership interest of a captive insurer.

Source: Laws 2007, LB117, § 37.

44-8204 Name.

No captive insurer shall adopt the name of any existing insurer or any name that may be misleading to the public.

Source: Laws 2007, LB117, § 38.

44-8205 Certificate of authority; application; fee; plan of operation; filings required; director; powers; subsequent amendments; books and records.

(1) No person shall transact the business of insurance as a captive insurer without first applying for and obtaining from the director a certificate of authority. An applicant shall submit a nonrefundable application fee of five hundred dollars with a plan of operation which includes:

(a) Articles of incorporation and bylaws or other documents of organization;

(b) Pro forma financial statements for two years;

(c) The source and nature of initial and ongoing capital;

(d) A feasibility study which discloses the types and adequacy of the insurance programs of the captive insurer, the identity of the parent and affiliated entities benefiting from such insurance program, and the relationships to the captive insurer as well as all projected expenses, contracts, and a holding company system chart identifying the ownership and relationship of the parent and affiliated entities;

(e) Copies of all insurance and reinsurance agreements of the captive insurer as well as disclosure of all transactions material to the insurance operations;

(f) Financial condition of the parent and, if requested by the director, any affiliated entities, benefiting from the captive insurance program;

(g) A management overview including competence, experience, and integrity of those controlling the insurance operations;

(h) A statement submitting to the jurisdiction of the director; and

(i) An explanation of how the operation of the captive insurer promotes the development of a Nebraska business.

(2) If the plan of operation is accepted and approved by the director, the articles and other documents of organization shall be filed in the office of the Secretary of State. A copy of the articles or other documents of organization,

certified by the Secretary of State, shall be filed with the director. Amendments to organizational documents shall be deemed a change to the plan of operation and shall be filed with and approved by the director before they are submitted to the Secretary of State.

(3) The director may refuse to issue a certificate of authority until he or she is reasonably satisfied that the plan of operation contains sufficient indication of a successful insurance operation and that the captive insurer will be able to meet expected or ongoing policy obligations.

(4) A captive insurer shall obtain prior written approval of any subsequent amendments to any components of the original plan of operation. The director shall deem that any captive insurer that has failed to disclose a transaction or a series of transactions that would circumvent the Captive Insurers Act to be in hazardous financial condition with respect to the public or its policyholders and subject to suspension or revocation of the certificate of authority of the captive insurer.

(5) Except as otherwise authorized in section 44-8216, a captive insurer may only transact any line or lines of insurance specified in subdivisions (5), (7), (8), (9), (10), and (18) of section 44-201. A captive insurer shall not transact directors and officers insurance.

(6) Every captive insurer shall provide to the director books and records in the state as to enable the financial examination of the captive insurer by the director.

Source: Laws 2007, LB117, § 39.

44-8206 Management of business; director or officer; restriction.

A board of directors or other governing body consisting of not less than three individuals shall manage the business of each captive insurer. The organizational documents or bylaws shall provide for the terms, meetings, and elections of the directors and officers of the governing body. No individual may serve as a director or officer who has been convicted of fraud involving any financial institution or of a felony involving misuse of funds.

Source: Laws 2007, LB117, § 40.

44-8207 Certificate of authority; expiration; renewal; fee.

The certificate of authority issued to a captive insurer shall expire on June 30 of each year. The director shall renew the certificate of authority upon payment of an annual renewal fee of five hundred dollars and all other required fees and the filing of all required reports.

Source: Laws 2007, LB117, § 41.

44-8208 Report; filing required; form; director; other reports.

(1) Every captive insurer with a certificate of authority to transact business in this state pursuant to the Captive Insurers Act shall file with the director a report, signed and sworn to by its chief officers, of its financial condition as of the end of each fiscal year. The report shall be in a form prescribed by the director and contain such information as the director deems necessary for the purpose of ascertaining whether the captive insurer can continue to meet its policy obligations to its parent, affiliated entities, and claimants. The report shall be filed within sixty days following the end of the captive insurer's fiscal

year. The director may require that the report include the information required by section 44-322, including any instructions, procedures, and guidelines consistent with the act.

(2) The director may prescribe the format and frequency of other reports to be filed, which may include, but not be limited to, summary loss reports, quarterly financial statements, audited annual financial statements, holding company statements, biographical information on officers and directors, and other professional reports.

Source: Laws 2007, LB117, § 42.

44-8209 Total capital and surplus requirements; director; powers; letter of credit requirements.

(1) No captive insurer shall be permitted to transact any business in this state unless it maintains total capital and surplus in the amount of at least one hundred thousand dollars in such form as is acceptable to the director.

(2) Upon a written finding by the director that the approved plan of operation or the operational results of the captive insurer require either additional capital or a larger surplus than required by this section, the director may require that additional capital or surplus, or both, be obtained. Additional capital or surplus may be tendered in the form of an irrevocable evergreen letter of credit acceptable to the director.

(3) Any letter of credit provided to satisfy the requirements of the Captive Insurers Act shall be:

(a) Jointly held under the control of the director and the captive insurer for the benefit of claimants;

(b) Issued or confirmed by an institution that is insured by the Federal Deposit Insurance Corporation;

(c) The sole property of such captive insurer; and

(d) Free and clear of any claim or encumbrance.

Source: Laws 2007, LB117, § 43.

44-8210 Examinations.

The director may examine the financial condition, affairs, and management of any applicant or captive insurer pursuant to the Insurers Examination Act.

Source: Laws 2007, LB117, § 44.

Cross References

Insurers Examination Act, see section 44-5901.

44-8211 Investments; limitation on loans and investments.

(1) Captive insurers shall be subject to the types and nature of investments as set forth in the Insurers Investment Act, but not subject to any limitations contained in such act as to invested amounts, except that the director may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurer or if such investments are not made in accordance with the approved plan of operation.

(2) No captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director and any such

transaction shall be evidenced by documentation approved by the director. Loans of minimum capital and surplus funds are prohibited.

Source: Laws 2007, LB117, § 45.

Cross References

Insurers Investment Act, see section 44-5101.

44-8212 Credit for reserves ceded to reinsurer.

(1) Except as otherwise provided in subsection (2) of this section, any captive insurer authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to the provisions of sections 44-416.05 to 44-416.10 and any rules and regulations adopted and promulgated under such sections.

(2) Notwithstanding the provisions of subsection (1) of this section, any captive insurer may cede risks to a reinsurer not meeting the standards of sections 44-416.05 to 44-416.10 and may take reserve credits if the captive insurer receives prior written approval from the director.

Source: Laws 2007, LB117, § 46.

44-8213 Membership in guaranty associations.

A captive insurer shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to coverage offered by a captive insurer.

Source: Laws 2007, LB117, § 47.

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.

44-8214 Voluntary dissolution; approval of director required; effect of dissolution.

The director shall approve any voluntary dissolution of a captive insurer if the director determines that all obligations of the captive insurer have been satisfied. The dissolution of a captive insurer shall not impair the right of any person to commence an action against the captive insurer for any liability previously incurred.

Source: Laws 2007, LB117, § 48.

44-8215 Suspension or revocation of certificate of authority; administrative fine; grounds; notice; hearing; cease and desist order.

(1) After notice and a hearing conducted pursuant to the Administrative Procedure Act, the director may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed one thousand dollars per violation, or any combination of such actions, if the director finds the captive insurer:

(a) Engages in financial practices that make further transaction of business in this state hazardous or injurious to claimants or the public as defined by rule and regulation adopted and promulgated by the director;

(b) Within fifteen business days fails to respond to an inquiry of the director;

(c) Fails to pay any final judgment rendered against it in this state on any contractual obligation in a reasonable period of time;

(d) Conducts business fraudulently or has not met its contractual obligations in good faith; or

(e) Violates any provision of the laws of this or any other state.

(2) In lieu of or in addition to the administrative fines set forth in subsection (1) of this section, the director may issue a cease and desist order to a captive insurer if the captive insurer engages in any of the activities set forth in subsection (1) of this section.

Source: Laws 2007, LB117, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

44-8216 Creation of special purpose financial captive insurers; applicability of act; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.

(1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(c) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(d) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(e) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(f) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(g) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(h) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(i) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(4) A special purpose financial captive insurer may be established as a stock corporation, limited liability company, partnership, or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a) Of the value of the assets held in trust for, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director, for the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) The assets are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose

financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any

purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Source: Laws 2007, LB117, § 50.

Cross References

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4801.

44-8217 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Captive Insurers Act.

Source: Laws 2007, LB117, § 51.

44-8218 Applicability of insurance laws.

(1) The insurance laws of this state shall not apply to captive insurers except as permitted in the Captive Insurers Act.

(2) The following provisions of Chapter 44 apply to captive insurers:

(a) The Insurers Examination Act;

(b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114, 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326, and 44-360; and

(c) The Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. Such act shall only apply to a captive insurer that provides insurance and reinsurance to a parent or affiliated entity that is an insurer.

Source: Laws 2007, LB117, § 52.

Cross References

Insurers Examination Act, see section 44-5901.
Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4801.

ARTICLE 83
DISCOUNT MEDICAL PLAN ORGANIZATION ACT

Section

44-8301 Act, how cited.

Sections 44-8301 to 44-8316 shall be known and may be cited as the Discount Medical Plan Organization Act.

Source: Laws 2008, LB855, § 33.
Operative date July 18, 2008.

44-8302 Purpose of act.

The purpose of the Discount Medical Plan Organization Act is to promote the public interest by establishing standards for discount medical plan organizations to protect consumers from unfair or deceptive marketing, sales, or enrollment practices and to facilitate consumer understanding of the role and function of discount medical plan organizations in providing access to medical or ancillary services.

Source: Laws 2008, LB855, § 34.
Operative date July 18, 2008.

44-8303 Terms, defined.

For purposes of the Discount Medical Plan Organization Act:

(1) Affiliate means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Ancillary services includes, but is not limited to, audiology, dental, vision, mental health, substance abuse, chiropractic, and podiatry services;

(3) Control or controlled by or under common control with means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person;

(4) Director means the Director of Insurance;

(5)(a) Discount medical plan means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, offers access for its members to providers of medical or ancillary services and the right to receive discounts on medical or ancillary services provided under the discount medical plan from those providers.

(b) Discount medical plan does not include a plan that does not charge a membership or other fee to use the plan's discount medical card;

(6) Discount medical plan organization means an entity that, in exchange for fees, dues, charges, or other consideration, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive medical or ancillary services from those providers at a discount. It is the organization that contracts with providers, provider networks, or other discount medical plan organizations to offer access to medical or ancillary services at a discount and determines the charge to discount medical plan members;

(7) Facility means an institution providing medical or ancillary services or a health care setting. Facility includes, but is not limited to:

(a) A hospital or other licensed inpatient center;

(b) An ambulatory surgical or treatment center;

(c) A skilled nursing center;

(d) A residential treatment center;

(e) A rehabilitation center; and

(f) A diagnostic, laboratory, or imaging center;

(8) Health care professional means a physician, pharmacist, or other health care practitioner who is licensed, accredited, or certified to perform specified medical or ancillary services within the scope of his or her license, accreditation, certification, or other appropriate authority and consistent with state law;

(9) Health carrier means an entity certified under and subject to the insurance laws and rules and regulations of this state or subject to the jurisdiction of the director that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or medical or ancillary services;

(10) Marketer means a person or entity that markets, promotes, sells, or distributes a discount medical plan including a private label entity that places its name on and markets or distributes a discount medical plan pursuant to a marketing agreement with a discount medical plan organization;

(11) Medical services means any maintenance care of, or preventive care for, the human body or care, service, or treatment of an illness or dysfunction of, or injury to, the human body. Medical services includes, but is not limited to, physician care, inpatient care, hospital surgical services, emergency services, ambulance services, laboratory services, and medical equipment and supplies. Medical services does not include pharmacy services or ancillary services;

(12) Member means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount medical plan;

(13) Person means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, or any similar entity or any combination of the foregoing;

(14) Provider means any health care professional or facility that has contracted, directly or indirectly, with a discount medical plan organization to provide medical or ancillary services to members; and

(15) Provider network means an entity that negotiates directly or indirectly with a discount medical plan organization on behalf of more than one provider to provide medical or ancillary services to members.

Source: Laws 2008, LB855, § 35.
Operative date July 18, 2008.

44-8304 Control; presumption.

Control as used in the Discount Medical Plan Organization Act is presumed to exist if any person, directly or indirectly, owns, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided in subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Source: Laws 2008, LB855, § 36.
Operative date July 18, 2008.

44-8305 Applicability of act.

(1) The Discount Medical Plan Organization Act applies to all discount medical plan organizations doing business in or from this state.

(2) A discount medical plan organization that is a health carrier is not required to obtain a certificate of registration under section 44-8306, except that each of its affiliates that operates as a discount medical plan organization in this state shall obtain a certificate of registration under section 44-8306 and comply with all other provisions of the act. The discount medical plan organization is required to comply with sections 44-8308 to 44-8311 and report, in the form and manner as the director may require, any of the information described in subsection (2) of section 44-8313 that is not otherwise already reported.

(3) A provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a certificate of registration under the act as a discount medical plan organization.

Source: Laws 2008, LB855, § 37.
Operative date July 18, 2008.

44-8306 Certificate of registration; application; fee; director; duties; renewal; application; fee; disciplinary actions; grounds; hearing; cease and desist order; penalty.

(1) Before doing business in or from this state as a discount medical plan organization, a discount medical plan organization:

(a) May transact business in this state under Chapter 21; and

(b) Shall obtain a certificate of registration from the director to operate as a discount medical plan organization.

(2) Each application for a certificate of registration to operate as a discount medical plan organization shall:

(a) Be in a form prescribed by the director and verified by an officer or authorized representative of the applicant;

(b) Be accompanied by an application fee not to exceed five hundred dollars;

(c) Include information on whether:

(i) A previous application for a certificate of registration or licensure has been denied, revoked, suspended, or terminated for cause in any jurisdiction; and

(ii) The applicant is under investigation for or the subject of any pending action or has been found in violation of a statute or regulation in any jurisdiction within the previous five years; and

(d) Include information as the director may require that permits the director, after reviewing all of the information submitted pursuant to this subsection, to make a determination that the applicant:

(i) Is financially responsible;

(ii) Has adequate expertise or experience to operate a discount medical plan organization; and

(iii) Is of good character.

(3) After the receipt of an application filed pursuant to subsection (2) of this section, the director shall review the application and notify the applicant of any deficiencies in the application.

(4) No more than ninety days after the date of receipt of a completed application, the director shall issue a certificate of registration if the director is satisfied that the applicant has met the requirements of subsection (2) of this section or shall deny the application and state the grounds for denial.

(5) Prior to issuance of a certificate of registration by the director, each discount medical plan organization shall establish an Internet web site in order to conform to the requirements of subsection (2) of section 44-8309.

(6)(a) A registration is effective for one year unless before its expiration it is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (7) of this section.

(b) At least ninety days before a certificate of registration is set to expire, the discount medical plan organization shall submit:

(i) A renewal application form; and

(ii) The renewal fee.

(c) The director shall renew the certificate of registration of each holder that meets the requirements of the Discount Medical Plan Organization Act and pays the renewal fee of three hundred dollars.

(7)(a) The director may suspend or revoke a certificate of registration after notice and hearing held in accordance with the Administrative Procedure Act if the director finds that any of the following conditions exist:

(i) The discount medical plan organization is not operating in compliance with the Discount Medical Plan Organization Act;

(ii) The discount medical plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iii) The discount medical plan organization is not fulfilling its obligations as a discount medical plan organization; or

(iv) The continued operation of the discount medical plan organization would be hazardous to its members.

(b) If the director has cause to believe that grounds for the denial or nonrenewal of a certificate of registration exist, the director shall notify the discount medical plan organization in writing specifically stating the grounds for the refusal to grant or renew the certificate of registration. The applicant or registrant has thirty days after receipt of such notification to demand a hearing. The hearing shall be held no more than thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

(c)(i) The director shall, in his or her order suspending the authority of the discount medical plan organization to enroll new members, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount medical plan organization prior to reinstatement of its certificate of registration to enroll members.

(ii) The director may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The certificate of registration of a discount medical plan organization shall not be reinstated unless requested by the discount medical plan organization. The director shall not grant the request for reinstatement if the director finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(8) In lieu of suspending or revoking a discount medical plan organization's certificate of registration under subsection (7) of this section, if the discount medical plan organization has violated any provision of the Discount Medical Plan Organization Act, the director may:

(a) Issue and cause to be served upon the organization charged with the violation a copy of the findings and an order requiring the organization to cease and desist from engaging in the act or practice that constitutes the violation; and

(b) Impose a monetary penalty of not more than one thousand dollars for each violation.

(9) Each registered discount medical plan organization shall notify the director immediately whenever the discount medical plan organization's certificate of registration or other form of authority to operate as a discount medical

plan organization in another state is suspended, revoked, or not renewed in that state.

Source: Laws 2008, LB855, § 38.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-8307 Director; examination or investigation; powers; expenses.

(1) The director may examine or investigate the business and affairs of any discount medical plan organization to protect the interests of the residents of this state based on the following reasons, including, but not limited to, complaint indices, recent complaints, information from other states, or as the director deems necessary.

(2) An examination or investigation conducted as provided in subsection (1) of this section shall be performed in accordance with the provisions of the Insurers Examination Act.

(3) The director may:

(a) Order any discount medical plan organization or applicant that operates a discount medical plan organization to produce any records, books, files, advertising and solicitation materials, or other information; and

(b) Take statements under oath to determine whether the discount medical plan organization or applicant is in violation of the law or is acting contrary to the public interest.

(4) The discount medical plan organization or applicant that is the subject of the examination or investigation shall pay the expenses incurred in conducting the examination or investigation. Failure by the discount medical plan organization or applicant to pay such expenses is grounds for denial of a certificate of registration to operate as a discount medical plan organization or revocation of a certificate of registration to operate as a discount medical plan organization.

Source: Laws 2008, LB855, § 39.
Operative date July 18, 2008.

Cross References

Insurers Examination Act, see section 44-5901.

44-8308 Charges authorized; right to cancel membership; plan sold in conjunction with other products; duties.

(1) A discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for a discount medical plan.

(2)(a)(i) If a member cancels his or her membership in the discount medical plan organization within thirty days after the date of receipt of the written document for the discount medical plan described in subsection (4) of section 44-8311, the member shall receive a reimbursement of all periodic charges and the amount of any one-time processing fee that exceeds thirty dollars upon return of the discount medical plan card to the discount medical plan organization.

(ii)(A) Cancellation occurs when notice of cancellation is given to the discount medical plan organization.

(B) Notice of cancellation is deemed given when delivered by hand or deposited in a mailbox, properly addressed, and postage prepaid to the mailing address of the discount medical plan organization.

(iii) A discount medical plan organization shall return any periodic charge charged or collected after the member has returned the discount medical plan card or given the discount medical plan organization notice of cancellation.

(b) If the discount medical plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount medical plan organization shall make a pro rata reimbursement of all periodic charges to the member.

(3) When a marketer or discount medical plan organization sells a discount medical plan in conjunction with any other products, the marketer or discount medical plan organization shall:

(a) Provide the charges for each discount medical plan in writing to the member; or

(b) Reimburse the member for all periodic charges for the discount medical plan if the member cancels his or her membership in accordance with subdivision (2)(a) of this section.

(4) Any discount medical plan organization that is a health carrier that provides a discount medical plan product that is incidental to the insured product is not subject to this section.

Source: Laws 2008, LB855, § 40.
Operative date July 18, 2008.

44-8309 Written provider agreement required; contents; Internet web site; information required; toll-free telephone number.

(1)(a) A discount medical plan organization shall have a written provider agreement with all providers offering medical or ancillary services to its members. The written provider agreement may be entered into directly with the provider or indirectly with a provider network to which the provider belongs.

(b) A provider agreement between a discount medical plan organization and a provider shall provide the following:

(i) A list of the medical or ancillary services and products to be provided at a discount;

(ii) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the provider's discounted rates; and

(iii) That the provider will not charge members more than the discounted rates.

(c) A provider agreement between a discount medical plan organization and a provider network shall require that the provider network have written agreements with its providers that:

(i) Contain the provisions described in subdivision (1)(b) of this section;

(ii) Authorize the provider network to contract with the discount medical plan organization on behalf of the provider; and

(iii) Require the provider network to maintain an up-to-date list of its contracted providers and to provide the list on a monthly basis to the discount medical plan organization.

(d) A provider agreement between a discount medical plan organization and an entity that contracts with a provider network shall require that the entity, in its contract with the provider network, require the provider network to have written agreements with its providers that comply with subdivision (1)(c) of this section.

(e) The discount medical plan organization shall maintain a copy of each active provider agreement into which it has entered.

(2) Each discount medical plan organization shall maintain on an Internet web site an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. The web site address shall be prominently displayed on all of its advertisements, marketing materials, brochures, and discount medical plan cards. This subsection applies to those providers with which the discount medical plan organization has contracted directly as well as those providers that are members of a provider network with which the discount medical plan organization has contracted.

(3) Each discount medical plan organization shall maintain a toll-free telephone number for members to obtain additional information about and assistance on the discount medical plan and an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. The toll-free telephone number shall be prominently displayed on all of its advertisements, marketing materials, brochures, and discount medical plan cards. Capable and competent personnel shall staff the toll-free telephone number.

Source: Laws 2008, LB855, § 41.
Operative date July 18, 2008.

44-8310 Marketing; written agreement required; approval of advertising; powers of director.

(1) A discount medical plan organization may market directly or contract with other marketers for the distribution of its product.

(2)(a) The discount medical plan organization shall have an executed written agreement with each marketer prior to the marketer's marketing, promoting, selling, or distributing the discount medical plan.

(b) The agreement between the discount medical plan organization and the marketer shall prohibit the marketer from using advertising, marketing materials, brochures, and discount medical plan cards without the discount medical plan organization's approval in writing.

(c) The discount medical plan organization shall be bound by and responsible for the activities of a marketer that are within the scope of the marketer's agency relationship with the organization.

(3) A discount medical plan organization shall approve in writing all advertisements, marketing materials, brochures, and discount cards used by marketers to market, promote, sell, or distribute the discount medical plan prior to their use.

(4) Upon request, a discount medical plan organization shall submit to the director all advertising, marketing materials, and brochures regarding a discount medical plan.

Source: Laws 2008, LB855, § 42.
Operative date July 18, 2008.

44-8311 Communications to prospective members and members; requirements; disclosures required; new member; terms and conditions of plan; information included.

(1)(a) All advertisements, marketing materials, brochures, discount medical plan cards, and any other communications of a discount medical plan organization provided to prospective members and members shall be truthful and not misleading in fact or in implication.

(b) Any advertisement, marketing material, brochure, discount medical plan card, or other communication is misleading in fact or in implication if it has a capacity or tendency to mislead or deceive based on the overall impression that it is reasonably expected to create within the segment of the public to which it is directed.

(2)(a) Except as otherwise provided in the Discount Medical Plan Organization Act, as a disclaimer of any relationship between discount medical plan benefits and insurance, or as a description of an insurance product connected with a discount medical plan, a discount medical plan organization shall not use in its advertisements, marketing materials, brochures, or discount medical plan cards the term insurance.

(b) Except as otherwise provided in state law, a discount medical plan organization shall not describe or characterize the discount medical plan as being insurance whenever a discount medical plan is bundled with an insurance product and the insurance benefits are incidental to the discount medical plan benefits.

(c) A discount medical plan organization shall not:

(i) Use in its advertisements, marketing materials, brochures, or discount medical plan cards the terms health plan, coverage, copay, copayment, deductible, preexisting condition, guaranteed issue, premium, PPO, preferred provider organization, or other terms in a manner that could reasonably mislead an individual into believing that the discount medical plan is health insurance;

(ii) Use language in its advertisements, marketing materials, brochures, or discount medical plan cards with respect to being licensed or registered by a state insurance department in a manner that could reasonably mislead an individual into believing that the discount medical plan is insurance or has been endorsed by a state;

(iii) Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount medical plan card or the access to any range of discounts offered by the discount medical plan card;

(iv) Have restrictions on access to discount medical plan providers, including waiting periods and notification periods, except for hospital services; or

(v) Pay providers any fees for medical or ancillary services or collect or accept money from a member to pay a provider for medical or ancillary services provided under the discount medical plan unless the discount medical plan organization has an active certificate of authority to act as a third-party administrator in accordance with the Third-Party Administrator Act.

(3)(a) Each discount medical plan organization shall make the following general disclosures in writing in not less than twelve-point font on the first content page of any advertisement, marketing material, or brochure made available to the public relating to a discount medical plan together with any enrollment forms given to a prospective member:

(i) That the plan is a discount plan and is not insurance coverage;

(ii) That the range of discounts for medical or ancillary services provided under the plan will vary depending on the type of provider and medical or ancillary service received;

(iii) Unless the discount medical plan organization has an active certificate of authority to act as a third-party administrator as described in subdivision (2)(c)(v) of this section, that the plan does not make payments to providers for the medical or ancillary services received under the discount medical plan;

(iv) That the plan member is obligated to pay for all medical or ancillary services but will receive a discount from those providers that have contracted with the discount medical plan organization; and

(v) The toll-free telephone number and Internet web site address for the registered discount medical plan organization for prospective members and members to obtain additional information about and assistance on the discount medical plan and an up-to-date list of providers participating in the discount medical plan.

(b) If the initial contact with a prospective member is by telephone, the disclosures required under subdivision (a) of this subsection shall be made orally and included in the initial written materials that describe the benefits under the discount medical plan provided to the prospective or new member.

(4)(a) In addition to the general disclosures required under subsection (3) of this section, each discount medical plan organization shall provide to:

(i) Each prospective member, at the time of enrollment, information that describes the terms and conditions of the discount medical plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount medical plan; and

(ii) Each new member a written document that contains the terms and conditions of the discount medical plan.

(b) The written document required under subdivision (a)(ii) of this subsection shall be clear and include the following information:

(i) The name of the member;

(ii) The benefits to be provided under the discount medical plan;

(iii) Any processing fees and periodic charges associated with the discount medical plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;

(iv) The frequency of payment of any processing fees and periodic charges and procedures for changing the frequency of payment;

(v) Any limitations, exclusions, or exceptions regarding the receipt of discount medical plan benefits;

(vi) Any waiting periods for certain medical or ancillary services under the discount medical plan;

(vii) Procedures for obtaining discounts under the discount medical plan, such as requiring members to contact the discount medical plan organization to make an appointment with a provider on the member's behalf;

(viii) Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements and procedures for obtaining refunds;

(ix) Renewal, termination, and cancellation terms and conditions;

(x) Procedures for adding new members to a family discount medical plan, if applicable;

(xi) Procedures for filing complaints under the discount medical plan organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact his or her state insurance department; and

(xii) The name, toll-free telephone number, and mailing address of the discount medical plan organization or other entity where the member can make inquiries about the plan, send cancellation notices, and file complaints.

Source: Laws 2008, LB855, § 43.
Operative date July 18, 2008.

Cross References

Third-Party Administrator Act, see section 44-5801.

44-8312 Change in information; notice to director.

Each discount medical plan organization shall provide the director notice of any change in the discount medical plan organization's name, address, telephone number, principal business address or mailing address, or Internet web site address no less than thirty days before such change is to occur.

Source: Laws 2008, LB855, § 44.
Operative date July 18, 2008.

44-8313 Annual report; contents; failure to file; effect.

(1) If the information required in subsection (2) of this section is not provided at the time of renewal of a certificate of registration under section 44-8306, a discount medical plan organization shall file an annual report with the director in the form prescribed by the director within three months after the end of each fiscal year.

(2) The report shall include:

(a) If different from the initial application for a certificate of registration or at the time of renewal of a certificate of registration, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements with such persons and the discount medical plan organization, including any possible conflicts of interest;

(b) The number of discount medical plan members in the state; and

(c) Any other information relating to the performance of the discount medical plan organization that may be required by the director.

(3)(a) Any discount medical plan organization that fails to file an annual report in the form and within the time required by this section shall forfeit:

(i) Up to five hundred dollars each day for the first ten days during which the violation continues; and

(ii) Up to one thousand dollars each day after the first ten days during which the violation continues.

(b) Upon notice by the director, the discount medical plan organization described in subdivision (a) of this subsection shall lose its authority to enroll new members or to do business in this state if the violation continues.

Source: Laws 2008, LB855, § 45.
Operative date July 18, 2008.

44-8314 Violation; unfair trade practice; administrative penalty; fraudulent insurance act; restitution.

(1) A violation of the Discount Medical Plan Organization Act shall be an unfair trade practice under the Unfair Insurance Trade Practices Act.

(2) In addition to the penalties and other enforcement provisions of the Discount Medical Plan Organization Act, any person who willfully violates the act is subject to administrative penalties of up to one thousand dollars per violation.

(3) A person that willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306 commits a fraudulent insurance act under section 28-631.

(4) A person that collects fees for purported membership in a discount medical plan but purposefully fails to provide the promised benefits commits a fraudulent insurance act under section 28-631. In addition, upon conviction, such person shall be ordered to pay restitution to persons aggrieved by the violation of the act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of such fine or imprisonment.

Source: Laws 2008, LB855, § 46.
Operative date July 18, 2008.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-8315 Violations of act; cease and desist order; hearing; appeal; director; additional powers.

(1) The director may issue an order directing a discount medical plan organization to cease and desist from engaging in any action or practice in violation of the Discount Medical Plan Organization Act. Within ten days after service of the cease and desist order, the organization may request a hearing on the question of whether an action or practice in violation of the act has occurred. Such hearing shall be conducted as provided by the Administrative Procedure Act. The organization may appeal the decision of the director. Such appeal shall be in accordance with the Administrative Procedure Act.

(2)(a) In addition to the penalties and other enforcement provisions of the Discount Medical Plan Organization Act, the director may seek both temporary and permanent injunctive relief when:

(i) A discount medical plan is being operated by a person or entity that is not registered pursuant to the act; or

(ii) Any person, entity, or discount medical plan organization has engaged in any activity prohibited by the act or any rules or regulations adopted and promulgated pursuant to the act.

(b) The district court of Lancaster County shall have exclusive jurisdiction over any proceeding brought pursuant to this section.

(3) The director's authority to seek relief under this section is not conditioned upon having conducted any proceeding pursuant to the provisions of the Administrative Procedure Act.

Source: Laws 2008, LB855, § 47.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

44-8316 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the provisions of the Discount Medical Plan Organization Act.

Source: Laws 2008, LB855, § 48.
Operative date July 18, 2008.

CHAPTER 45
INTEREST, LOANS, AND DEBT

Article.
1. Interest Rates and Loans.
   (f) Loan Brokers. 45-191.01, 45-191.04.
   (i) Consumer Credit Default Procedures. 45-1,109.
3. Installment Sales. 45-334 to 45-353.
7. Mortgage Bankers Registration and Licensing. 45-701 to 45-723.
9. Delayed Deposit Services Licensing Act. 45-901 to 45-927.
10. Nebraska Installment Loan Act. 45-1001 to 45-1069.

Cross References

Credit Report Protection Act, see section 8-2601.

ARTICLE 1
INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section
45-191.01. Loan brokerage agreement; written disclosure statement; requirements.
45-191.04. Loan brokerage agreement; requirements; right to cancel.

(i) CONSUMER CREDIT DEFAULT PROCEDURES

45-1,109. Consumer credit transactions; procedures; when applicable.

(f) LOAN BROKERS

45-191.01 Loan brokerage agreement; written disclosure statement; requirements.

(1) At least forty-eight hours before the borrower signs a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker, if any;

(b) A statement as to whether the loan broker does business as an individual, partnership, corporation, or other organizational form, including identification of the state of incorporation or formation;

(c) How long the loan broker has done business;

(d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;

(e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;

(f) A description of the services the loan broker agrees to perform for the borrower;

(g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;

(h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;

(i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:

(i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

Source: Laws 1993, LB 270, § 3; Laws 2007, LB124, § 29.

45-191.04 Loan brokerage agreement; requirements; right to cancel.

(1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within three business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower's right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

(a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker's principal business address, telephone number, and electronic mail and Internet address, if any, and the name, address, telephone

number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower's right to cancel the loan brokerage agreement pursuant to this section:

''You have three business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The three business days shall expire on ..... (last date to mail or deliver notice), and notice of cancellation should be mailed to ..... (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement.''

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

Source: Laws 1993, LB 270, § 6; Laws 2001, LB 53, § 89; Laws 2007, LB124, § 30.

(i) CONSUMER CREDIT DEFAULT PROCEDURES

45-1,109 Consumer credit transactions; procedures; when applicable.

Sections 45-1,105 to 45-1,110 shall apply to all consumer credit transactions in this state subject to a security interest, as defined in subdivision (35) of section 1-201, Uniform Commercial Code, entered into, extended, or renewed on or after January 1, 1984.

Source: Laws 1983, LB 111, § 5; Laws 2005, LB 570, § 1.

ARTICLE 3
INSTALLMENT SALES

Section
45-334. Act, how cited.
45-335. Terms, defined.
45-336. Installment contract; requirements.
45-340. Contracts negotiated by mail; requirements.
45-344. Excess charges; penalty.
45-346. License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.
45-346.01. Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated.
45-347. Fees; disposition.
45-348. License; renewal; fee; voluntary surrender of license.
45-350. License; denial of renewal; suspension; revocation; appeal.
45-351. Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.
45-352. Rules and regulations; adopt.
45-353. Violations; enforcement; receiver; appointment; powers; duties.

45-334 Act, how cited.

Sections 45-334 to 45-353 shall be known and may be cited as the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31.

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, 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) Director means the Director of Banking and Finance;

(13) Financial institution has the same meaning as in section 8-101;

(14) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a buyer's obligation to repay an extension of credit from the financial institution 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 unilateral decision to allow a deferral of repayment; and

(15) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a buyer's obligation to repay an extension of credit from the financial institution 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 unilateral decision to allow a deferral of repayment.

Source: Laws 1965, c. 268, § 2, p. 757; Laws 1965, c. 266, § 1, p. 751; 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.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

45-336 Installment contract; requirements.

(1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed, except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in

money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the amount included for a debt cancellation contract or a debt suspension contract if the debt cancellation contract or debt suspension contract is a contract of a financial institution, such contract is sold directly by such financial institution or by an unaffiliated, nonexclusive agent of such financial institution in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2006, and the financial institution is responsible for the unaffiliated, nonexclusive agent's compliance with such part, and a separate charge is made therefor; (f) the basic time price, which is the sum of subdivisions (c) and (d) of this subsection; (g) the time-price differential; (h) the amount of the time-price balance, which is the sum of subdivisions (f) and (g) of this subsection, payable in installments by the buyer to the seller; (i) the number, amount, and due date or period of each installment; and (j) the time-sales price.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) If a seller proffers an installment contract as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the contract if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the installment contract or in a separate document, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the installment contract, including a sales finance company, shall not be allowed to change such date.

(5) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof

or instruments or copies thereof signed by the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Source: Laws 1965, c. 268, § 3, p. 758; Laws 1994, LB 979, § 12; Laws 1994, LB 980, § 3; Laws 1999, LB 396, § 28; Laws 2006, LB 876, § 26.

45-340 Contracts negotiated by mail; requirements.

Installment contracts negotiated and entered into by mail without personal solicitation by salesmen 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.

45-344 Excess charges; penalty.

If any seller or sales finance company, in the making or collection of an installment contract, shall, directly or indirectly, contract for, take, or receive charges in excess of those authorized by the Nebraska Installment Sales Act except as a result of an accidental and bona fide error such contract shall be void and uncollectible as to (1) all of the excessive portion of the time-price differential, (2) the first one thousand dollars of the time-price differential authorized by section 45-338, and (3) the first four thousand dollars of the principal of the contract. If any seller or sales finance company violates any provision of the act, other than the violations described above, except as a result of an accidental and bona fide error, such installment contract shall be void and uncollectible as to the first five hundred dollars of the time-price differential and the first one thousand dollars of the principal of such contract. If any of such money has been paid by the buyer, such buyer or his or her assignee may recover under the act in a civil suit brought within one year after the due date, or any extension thereof, of the last installment of the contract.

Source: Laws 1965, c. 268, § 11, p. 763; Laws 2007, LB124, § 33.

45-346 License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.

(1) Each place of business operating under a license under the Nebraska Installment Sales Act shall have and properly display therein a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum

net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the Department of Banking and Finance 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 shall be submitted along with each application.

(5) The license year shall begin on October 1 of each year. 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 a change of control of a licensee is proposed, a new application for a license shall be submitted to the department. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

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.

45-346.01 Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated.

(1) A licensee may move its place of business from one place to another within a county without obtaining a new license if the licensee gives written notice thereof to the director at least ten days prior to such move.

(2) 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 within forty-five days after the audit is completed. If a

licensee fails to maintain the required minimum net worth, the Department of Banking and Finance may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) 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.

(4) Until October 1, 2008, a licensee licensed prior to September 1, 2007, may operate with no net worth or bonding requirement as provided for at the time such licensee was originally licensed.

Source: Laws 2007, LB124, § 35.

45-347 Fees; disposition.

All money collected under the authority of the Nebraska Installment Sales Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Source: Laws 1965, c. 268, § 14, p. 764; Laws 1973, LB 39, § 5; Laws 1995, LB 599, § 13; Laws 2007, LB124, § 36.

45-348 License; renewal; fee; voluntary surrender of license.

(1) Every licensee shall, on or before the first day of October, pay to the director the sum of one hundred fifty dollars for each license held as a license fee for the succeeding year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The Department of Banking and Finance shall issue a notice of cancellation of 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.

45-350 License; denial of renewal; suspension; revocation; appeal.

(1) Renewal of a license originally granted under the Nebraska Installment Sales Act may be denied or a license may be suspended or revoked by the director on the following grounds: (a) Material misstatement in the application for license; (b) willful failure to comply with any provision of the Nebraska Installment Sales Act relating to installment contracts; (c) defrauding any buyer to the buyer's damage; or (d) fraudulent misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the buyer under the Nebraska Installment Sales Act.

(2) If a licensee is a partnership, limited liability company, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corpora-

tion or any member of a licensed partnership or limited liability company has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(3) No license shall be denied, suspended, or revoked except after hearing in accordance with the Administrative Procedure Act. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by either registered or certified mail addressed to the principal place of business in this state of such licensee. Such notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof given after such entry forwarded by either registered or certified mail to the licensee at such principal place of business.

(4) Revocation, suspension, cancellation, expiration, or surrender of any license shall not impair or affect the obligation of any lawful installment contract acquired previously thereto by the licensee.

(5) Revocation, suspension, cancellation, expiration, or surrender of any license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, expiration, or surrender or affect liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to the Nebraska Installment Sales Act for acts committed before the revocation, suspension, cancellation, expiration, or surrender.

(6) Any person, licensee, or applicant considering himself or herself aggrieved by an order of the director entered under the provisions of this section may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 268, § 17, p. 766; Laws 1967, c. 276, § 3, p. 744; Laws 1988, LB 352, § 74; Laws 1993, LB 121, § 272; Laws 2005, LB 533, § 49.

Cross References

Administrative Procedure Act, see section 84-920.

45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.

(1) The Department of Banking and Finance shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37.

Cross References

Administrative Procedure Act, see section 84-920.

45-352 Rules and regulations; adopt.

The director shall have the power to make such general rules and regulations and specific rulings, demands, and findings as may be necessary for the proper conduct of the business licensed under the Nebraska Installment Sales Act, and the enforcement of the act, in addition thereto and not inconsistent therewith.

Source: Laws 1965, c. 268, § 19, p. 767; Laws 2007, LB124, § 38.

45-353 Violations; enforcement; receiver; appointment; powers; duties.

(1) Whenever the director has reasonable cause to believe that any person is violating or is threatening to or intends to violate any of the provisions of the Nebraska Installment Sales Act, he or she may, in addition to all actions provided for in the act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General or the director, to enjoin such

person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof.

(2) In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court, in which such action is brought, shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of the Nebraska Installment Sales Act through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

Source: Laws 1965, c. 268, § 20, p. 767; Laws 2007, LB124, § 39.

ARTICLE 7

MORTGAGE BANKERS REGISTRATION AND LICENSING

Section

45-701 Act, how cited.

Sections 45-701 to 45-723 shall be known and may be cited as the Mortgage Bankers Registration and Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40.

45-702 Terms, defined.

For purposes of the Mortgage Bankers Registration and Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust;

(2) Branch office means any location at which the business of a mortgage banker 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 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 a multistate licensing and application system, its affiliates, or subsidiaries;

(4) 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;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Financial institution means any person 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, or credit unions. Financial institution also means an industrial loan and investment company chartered under the laws of any other state and subject to similar supervision and regulation as a bank chartered under the laws of this state;

(8) Licensee means any person licensed under the act;

(9) Mortgage banker means any person not exempt under section 45-703 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 mortgage loan;

(10) Mortgage banking business means any person who employs a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a mortgage loan for compensation or gain or in the expectation of compensation or gain;

(11) Mortgage loan means any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

(12) Multistate licensing and application system means a residential real estate mortgage licensing system data base of which the department is a member;

(13) Offer means every attempt to provide, offer to provide, or solicitation to provide a 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;

(14) 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;

(15) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land;

(16) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(17) Registrant means a person registered pursuant to section 45-704; and

(18) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a mortgage loan.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 217, § 1; Laws 1993, LB 121, § 274; 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.
Operative date July 18, 2008.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.

45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Mortgage Bankers Registration and Licensing Act:

(a) Any financial institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

(c) Any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(d) Any person licensed to practice law in this state who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services in the regular course of his or her practice as an attorney at law;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services as a real estate broker or real estate salesperson;

(f) Any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the act or exempt from the act;

(g) Any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent;

(h) Any holding company of a financial institution other than a registered bank holding company;

(i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska;

(j) Any insurance company organized or chartered under the laws of any other state if the insurance company has a place of business in Nebraska; and

(k) Any individual who does not regularly engage in the mortgage banking business who (i) makes a mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of his or her own real property without the intent to resell the mortgage loan.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Source: Laws 1989, LB 272, § 6; Laws 1999, LB 396, § 31; Laws 2002, LB 957, § 22; Laws 2005, LB 533, § 50; Laws 2008, LB851, § 20. Operative date July 18, 2008.

45-704 Registration required; registration statement; fee; procedure; renewal.

(1) Notwithstanding any other provision of the Mortgage Bankers Registration and Licensing Act, no person exempt from licensing under subdivisions (1)(h) through (1)(k) of section 45-703 shall act as a mortgage banker or engage in the mortgage banking business until such person has registered with the department.

(2) Any person required to register pursuant to subsection (1) of this section shall submit to the department a registration statement on forms provided by the department. The forms shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be accompanied by a registration fee of two hundred dollars.

(4) The department shall acknowledge the registration by issuing to the registrant a receipt or other form of acknowledgment.

(5) A registration under this section shall not be assignable.

(6) After original registration, all registrations shall remain in full force and effect until the next succeeding March 1. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(7) If a registrant fails to renew his, her, or its registration as required by this section and does not voluntarily surrender the registration by delivering to the director written notice of the surrender, the department may issue a notice of expiration of the registration.

Source: Laws 1989, LB 272, § 7; Laws 1999, LB 396, § 32; Laws 2003, LB 218, § 2; Laws 2005, LB 533, § 51; Laws 2008, LB851, § 21. Operative date July 18, 2008.

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 or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on forms 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, 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, and (g) if the applicant is an individual, his or her social security number.

(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 (3) of section 45-715.

(5) The director may prescribe that the application for a license as a mortgage banker 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 Nebraska State Patrol. If the applicant is a partnership, association, corporation, or other form of business organization, the director may 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. 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 (3) of section 45-715, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license granted under the Mortgage Bankers Registration and Licensing Act shall not be assignable.

(7) 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.
Effective date July 18, 2008.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

45-706 License; issuance; denial; appeal; renewal; fees.

(1) Upon the filing of an application for a license, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Mortgage Bankers Registration and Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section 45-709; and (c) payment of the required fee.

(2) If the director determines that the license should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a license pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The director may deny an application for a license if an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding March 1. Beginning January 1, 2008, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, licenses may be renewed annually by filing with the director an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including the information submitted under subsection (3) of section 45-705.

(b) Except as provided in subdivision (3)(c) of this section, for the annual renewal of a license to conduct a mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be two hundred

dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (3) of section 45-715.

(c) Licenses which expire on March 1, 2008, shall be renewed until December 31, 2008, upon compliance with subdivision (3)(a) of this section. For such renewals, the department shall prorate the fees provided in subdivision (3)(b) of this section using a factor of ten-twelfths.

(4) The director may require a licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43; Laws 2008, LB380, § 2.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

45-707 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect.

(1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued under the Mortgage Bankers Registration and Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the Mortgage Bankers Registration and Licensing Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) of section 45-710 or has refused or failed to comply with subsection (2) of section 45-710 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-711 or as otherwise required following written notice of the

violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual, while previously associated in any other capacity with another licensee, was the subject of a complaint under the Mortgage Bankers Registration and Licensing Act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

(i) The licensee has violated the written restrictions or conditions under which the license was issued;

(j) The licensee, or if the licensee is a business entity, one of the officers, directors, shareholders, partners, and members, was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(k) The licensee has had a similar license revoked in any other jurisdiction; or

(l) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the act or with any state or federal law applicable to the mortgage banking business.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-717.01 for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-709, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-717.01 for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1989, LB 272, § 10; Laws 1997, LB 137, § 23; Laws 1999, LB 396, § 33; Laws 2003, LB 218, § 5; Laws 2005, LB 533, § 54; Laws 2006, LB 876, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

45-708 Prohibited acts; penalty.

(1) Any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act who, without first obtaining a license or registration under the act or while such license is suspended, revoked, canceled, or expired by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act, is guilty of a Class I misdemeanor.

Source: Laws 1989, LB 272, § 11; Laws 1999, LB 396, § 34; Laws 2007, LB124, § 44.

45-709 Surety bond; requirements.

(1) An applicant for a license shall file with the department a surety bond in the amount of one hundred thousand dollars, furnished by a surety company authorized to do business in the State of Nebraska. 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. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries required in this section shall satisfy the requirements of this section. The bond or a substitute bond shall remain in effect during all periods of licensing.

(2) At any time the director may require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under subsection (1) of this section is exhausted or is inadequate for any reason, including the financial condition of the licensee or the applicant for a license. The new or supplemental bond shall not exceed one million dollars.

(3) Until March 1, 2007, a licensee licensed prior to July 14, 2006, may maintain the bond amount such licensee was originally licensed under, unless the licensee is maintaining a bond pursuant to subsection (2) of this section.

Licensees maintaining a bond pursuant to subsection (2) of this section shall continue to maintain the amount of that bond until instructed otherwise by the director.

Source: Laws 1989, LB 272, § 12; Laws 1993, LB 217, § 2; Laws 2003, LB 218, § 6; Laws 2006, LB 876, § 31.

45-710 Director; investigate complaints; request for information; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee. The director may investigate complaints about a licensee. The director may investigate reports of alleged violations of the Mortgage Bankers Registration and Licensing Act or any rule, regulation, or order of the director under the act.

(2) Upon receipt by a licensee of the director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(3) In conducting an examination under this section, the director may rely on reports made by the licensee which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

(a) The United States Department of Housing and Urban Development;

(b) The Federal Housing Administration;

(c) The Federal National Mortgage Association;

(d) The Government National Mortgage Association;

(e) The Federal Home Loan Mortgage Corporation; or

(f) The United States Department of Veterans Affairs.

(4) If the director receives a complaint or other information concerning noncompliance with the Mortgage Bankers Registration and Licensing Act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(5) The total charge for an examination or investigation shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(6) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(7) Complaint files shall be deemed public records.

Source: Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45.

45-711 Licensee; duties.

A licensee 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 mortgage loans. If a licensee ceases to service 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 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 Mortgage Bankers Registration and Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the

borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn; and

(9) Notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) Business reorganization;

(c) The institution of license suspension or revocation procedures by any other state or jurisdiction;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(e) 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, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(f) A change of name, trade name, doing business as designation, or main office address;

(g) The establishment of a branch office. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(h) The closing of a branch office.

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.

45-714 Prohibited acts; violation; penalty; civil liability.

(1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or deed of trust or other loan documents;

(b) Delay closing of a mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;

(d) Misrepresent to, or conceal from, an applicant for a mortgage loan or a borrower material facts, terms, or conditions of a mortgage loan to which the licensee is a party;

(e) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any mortgage loan;

(f) Receive compensation for acting as a mortgage banker if the licensee has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage loan unless the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation both for acting as a mortgage banker and for acting as a real estate broker or agent;

(g) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

(h) Record a lien on real property if money is not available for the immediate disbursal to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;

(i) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain;

(j) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

(k) Collect fees and charges on funds other than new funds if the licensee makes a mortgage loan to refinance an existing mortgage loan to a current borrower of the licensee within twelve months after the previous mortgage loan made by the licensee;

(l) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

(m) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

(n) Falsify any documentation relating to a mortgage loan or a mortgage loan application;

(o) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt;

(p) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a mortgage loan; or

(q) Obtain a signature on a document required to be notarized in connection with a mortgage loan or a mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Source: Laws 1989, LB 272, § 17; Laws 2003, LB 218, § 9; Laws 2006, LB 876, § 32; Laws 2007, LB124, § 47.

45-715 Department; duties; rules and regulations; multistate licensing and application system.

(1) The department shall be responsible for the administration and enforcement of the Mortgage Bankers Registration and Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

(3) The department may participate in a multistate licensing and application system for mortgage lenders and mortgage bankers involving one or more states, the District of Columbia, or the Commonwealth of Puerto Rico. The system shall be established to facilitate the sharing of regulatory information and the licensing and application processes, by electronic or other means. The department may allow such system to collect licensing fees on behalf of the department, allow such system to collect a processing fee for the services of the

system directly from each applicant for a license, and allow such system to process and maintain records on behalf of the department, including information collected pursuant to subsection (5) of section 45-705.

Source: Laws 1989, LB 272, § 18; Laws 2003, LB 218, § 10; Laws 2007, LB124, § 48.

45-716 Money collected; disposition.

(1) All fees, charges, and costs collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) All fines collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the permanent school fund.

Source: Laws 1989, LB 272, § 19; Laws 1994, LB 1066, § 32; Laws 1995, LB 163, § 7; Laws 1995, LB 599, § 14; Laws 2003, LB 218, § 11; Laws 2007, LB124, § 51.

45-717 Cease and desist orders; department; powers; review; violation; penalty; construction of act.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Mortgage Bankers Registration and Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(4) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

(5) Nothing in the Mortgage Bankers Registration and Licensing Act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.

Source: Laws 1989, LB 272, § 20; Laws 1995, LB 163, § 8; Laws 2000, LB 932, § 33; Laws 2001, LB 53, § 102; Laws 2006, LB 876, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

45-717.01 Violations; administrative fine; costs; lien.

(1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by sections 45-707, 45-711, and 45-714 or otherwise violated the Mortgage Bankers Registration and Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-707.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-707 or otherwise violated the Mortgage Bankers Registration and Licensing Act, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 1995, LB 163, § 9; Laws 2003, LB 218, § 12; Laws 2006, LB 876, § 34.

Cross References

Administrative Procedure Act, see section 84-920.

45-717.02 Investigation or proceeding; enforcement of act; director; powers; failure to comply with act; effect.

(1) For the purpose of any investigation or proceeding under the Mortgage Bankers Registration and Licensing Act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(2) The director may request the Attorney General to enforce the Mortgage Bankers Registration and Licensing Act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and perma-

nent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(3) Except when expressly authorized, there shall be no private cause of action for any violation of the Mortgage Bankers Registration and Licensing Act.

(4) Failure to comply with the Mortgage Bankers Registration and Licensing Act shall not affect the validity or enforceability of any mortgage loan. A person acquiring a mortgage loan or an interest in a mortgage loan is not required to ascertain the extent of compliance with the act.

Source: Laws 2006, LB 876, § 35.

45-722 Acquisition of control of mortgage banking business; procedure; disapproval; hearing.

(1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Licensing Act without first giving thirty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicates that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2007, LB124, § 49; Laws 2008, LB851, § 22.
Operative date March 20, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

45-723 License under multistate licensing and application system; department; powers and duties.

(1) The department may require that a mortgage banker supply all or part of the information that must be provided to obtain a license pursuant to a multistate licensing and application system data base consistent with, and in compliance with, the Mortgage Bankers Registration and Licensing Act. Nothing in this subsection shall authorize the director to require any person exempt from licensure under the act or the employees or agents of any such person to submit information to or participate in the multistate licensing and application system.

(2) Except for the department, no person shall be authorized to obtain information from a multistate licensing and application system data base or initiate any civil action based on information obtained from such data base, if such information is not currently available to such person under section 8-112 or 45-710.

(3) The department shall ensure that a multistate licensing and application system adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and a multistate licensing and application system pertaining to the breach of security of the system provisions.

(4) The department shall upon written request provide the most recently available audited financial report of the multistate licensing and application system.

Source: Laws 2007, LB124, § 50.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section

45-901 Act, how cited.

Sections 45-901 to 45-929 shall be known and may be cited as the Delayed Deposit Services Licensing Act.

Source: Laws 1994, LB 967, § 1; Laws 2006, LB 876, § 36.

45-906 Application; fee; bond.

The application required by section 45-905 shall be accompanied by:

(1) A nonrefundable application fee of five hundred dollars; and

(2) A surety bond in the sum of fifty thousand dollars to be executed by the licensee and a surety company authorized to do business in Nebraska and approved by the director conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed and the prompt payment of any judgment recovered against the licensee. The bond or a substitute bond shall remain in effect during all periods of licensing or the licensee shall immediately cease doing business and its license shall be surrendered to or canceled by the department. A surety may cancel a bond only upon thirty days' written notice to the director.

The director may at any time require the filing of a new or supplemental bond in the form as provided in subdivision (2) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of the licensee or the applicant for a license, or violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee or applicant for a license. The new or supplemental bond shall not exceed one hundred thousand dollars.

Source: Laws 1994, LB 967, § 6; Laws 2001, LB 53, § 104; Laws 2006, LB 876, § 37.

45-907 Application; notice of filing; publication; hearing; investigation; costs.

(1) When an application for a delayed deposit services business license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the director for three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the delayed deposit services business. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the Department of Banking and Finance by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may investigate the propriety of the issuance of a license to the applicant. The costs of such investigation shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held and operated under a license to engage in the delayed deposit services business in Nebraska pursuant to the Delayed Deposit Services Licensing Act for at least three calendar years immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the delayed deposit services business, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Source: Laws 1994, LB 967, § 7; Laws 2006, LB 876, § 38; Laws 2008, LB851, § 23.
Operative date July 18, 2008.

45-910 License; posting; renewal; fee.

(1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of one hundred fifty dollars for the main office location and one hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Source: Laws 1994, LB 967, § 10; Laws 2001, LB 53, § 105; Laws 2005, LB 533, § 56.

45-911 Surrender of license; effect.

A licensee may surrender a delayed deposit services business license by delivering to the director written notice that the license is surrendered. The Department of Banking and Finance may issue a notice of cancellation of the license following such surrender in lieu of revocation proceedings. The surrender shall not affect the licensee's civil or criminal liability for acts committed prior to such surrender, affect the liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The director may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as he or she deems necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

Source: Laws 1994, LB 967, § 11; Laws 2006, LB 876, § 39.

45-912 Licensee; duty to inform director; when.

A licensee shall be required to notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(1) Bankruptcy or corporate reorganization;

(2) Business reorganization;

(3) Institution of license revocation procedures by any other state or jurisdiction;

(4) The filing of a criminal indictment or complaint against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(5) A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents; or

(6) The termination of employment or association with the licensee of any of the licensee's officers, directors, shareholders, partners, members, employees, or agents for violations or suspected violations of the Delayed Deposit Services Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee.

Source: Laws 1994, LB 967, § 12; Laws 2006, LB 876, § 40.

45-915 Licensee; principal place of business; change of location; branch offices; approval required; fee.

(1) Except as provided in subsection (2) of this section, a licensee may offer a delayed deposit services business only at an office designated as its principal place of business in the application. A licensee may change the location of its designated principal place of business with the prior written approval of the director. The director may establish forms and procedures for determining whether the change of location should be approved.

(2) A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the director. The director may establish forms and procedures for determining whether an original branch or branches or a change of location of a branch should be approved.

(3) A fee of one hundred fifty dollars shall be paid to the director for each request made pursuant to subsection (1) or (2) of this section.

Source: Laws 1994, LB 967, § 15; Laws 2006, LB 876, § 41.

45-915.01 Licensee; books and records.

(1) Each licensee shall keep or make available the books and records relating to transactions made under the Delayed Deposit Services Licensing Act as are necessary to enable the department to determine whether the licensee is complying with the act. The books and records shall be maintained in a manner consistent with accepted accounting practices.

(2) A licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by section 45-919.

(3) A licensee shall preserve or keep its books and records relating to every delayed deposit transaction for three years from the date of the inception of the transaction, or two years from the date a final entry is made thereon, including any applicable collection effort, whichever is later.

(4) The licensee shall maintain its books, accounts, and records, whether in physical or electronic form, at its designated principal place of business, except that books, accounts, and records which are older than two years may be maintained at any other place within this state as long as such records are available for inspection by the Department of Banking and Finance.

Source: Laws 2006, LB 876, § 47.

45-916 Operating with other business; conditions.

A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if:

(1) The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business;

(2) The other business is not of a type which would tend to conceal evasion of the Delayed Deposit Services Licensing Act. If the director determines upon investigation that the other business is of a type which would conceal evasion of the act, the director shall order such licensee to cease the operation of the other business at such location; and

(3) At least thirty days prior to conducting such other business, the licensee provides written notice to the director of (a) its intent to conduct such other business at its location or locations and (b) the nature of such other business and the director does not disapprove of such other business within thirty days after receiving the written notice.

Source: Laws 1994, LB 967, § 16; Laws 2006, LB 876, § 42.

45-917 Licensee; written notice; contents; fees, charges, and penalties; posting required.

(1) Every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing:

(a) The fee to be charged for the transaction;

(b) The date on which the check will be deposited or presented for negotiation; and

(c) Any penalty not to exceed fifteen dollars which the licensee will charge if the check is not negotiable on the date agreed upon. If the licensee required the maker to give two checks for one delayed deposit transaction, the licensee shall charge only one penalty in the event both checks are not negotiable on the date agreed upon.

(2) In addition to the notice required by subsection (1) of this section, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee. Such notice shall be posted at every office of the licensee.

Source: Laws 1994, LB 967, § 17; Laws 2006, LB 876, § 43.

45-919 Acts prohibited.

(1) No licensee shall:

(a) At any one time hold from any one maker more than two checks;

(b) At any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars;

(c) Hold or agree to hold a check for more than thirty-four days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-four-day period;

(d) Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or other person;

(e) Accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee;

(f) Renew, roll over, defer, or in any way extend a delayed deposit transaction by allowing the maker to pay less than the total amount of the check and any authorized fees or charges. This subdivision shall not prevent a licensee that agreed to hold a check for less than thirty-four days from agreeing to hold the check for an additional period of time no greater than the thirty-four days it would have originally been able to hold the check if (i) the extension is at the request of the maker, (ii) no additional fees are charged for the extension, and (iii) the delayed deposit transaction is completed as required by subdivision (1)(c) of this section. The licensee shall retain written or electronic proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the Delayed Deposit Services Licensing Act; or

(g) Enter into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the department that completion of the prior delayed deposit transaction has occurred. The licensee shall retain written proof of compliance with this subdivision. If a licensee fails, or is unable, to provide such proof to the department upon request, there shall be a rebuttable presumption that a violation of this subdivision has occurred and the department may pursue any remedies or actions available to it under the act.

(2) For purposes of this section, (a) completion of a delayed deposit transaction means the licensee has presented a maker's check for payment to a financial institution as defined in section 8-101 or the maker redeemed the check by paying the full amount of the check in cash to the licensee and (b) licensee shall include (i) a person related to the licensee by common ownership or control, (ii) a person in whom such licensee has any financial interest of ten percent or more, or (iii) any employee or agent of the licensee.

Source: Laws 1994, LB 967, § 19; Laws 2000, LB 932, § 34; Laws 2006, LB 876, § 44.

45-920 Director; examination of licensee; costs.

The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

Source: Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52.

45-922 Licensee; disciplinary actions; failure to renew.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if he or she finds:

(a) A licensee or any of its officers, directors, partners, or members has knowingly violated the act or any rule, regulation, or order of the director thereunder;

(b) A fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the director to refuse to issue such license;

(c) A licensee has abandoned its place of business for a period of sixty days or more;

(d) A licensee or any of its officers, directors, partners, or members has knowingly subscribed to, made, or caused to be made any false statement or false entry in the books and records of any licensee, has knowingly subscribed to or exhibited false papers with the intent to deceive the Department of Banking and Finance, has failed to make a true and correct entry in the books and records of such licensee of its business and transactions in the manner and form prescribed by the department, or has mutilated, altered, destroyed, secreted, or removed any of the books or records of such licensee without the written approval of the department or as provided in section 45-925; or

(e) A licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3)(a) If a licensee fails to renew its license as required by section 45-910 and does not voluntarily surrender the license pursuant to section 45-911, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-906, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a maker of a check.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for fines levied against the licensee or any of its officers, directors, shareholders, partners, or members, pursuant to section 45-925, for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 1994, LB 967, § 22; Laws 2001, LB 53, § 106; Laws 2006, LB 876, § 45; Laws 2008, LB851, § 24.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

45-925 Violations; orders authorized; administrative fine; lien; failure to pay; separate violation.

(1) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Delayed Deposit

Services Licensing Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

(2) If any person is found to have violated subdivision (1)(e), (1)(f), or (1)(g) of section 45-919, the director may also order such person to (a) return to the maker or makers all fees collected plus all or part of the amount of the check or checks which the licensee accepted in violation of such subdivision or subdivisions and (b) for a period up to one year not engage in any delayed deposit transaction with any maker for at least three days after the completion of a delayed deposit transaction with the same maker. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (1) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 1994, LB 967, § 25; Laws 2006, LB 876, § 46.

Cross References

Administrative Procedure Act, see section 84-920.

45-927 Fees, charges, costs, and fines; distribution.

All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund.

Source: Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section
45-1001. Act, how cited.
45-1002. Terms, defined; act; applicability.
45-1005. Installment loans; license; application; fee.
45-1006. Installment loans; application hearing; protest; procedure.
45-1007. Installment loans; license; bond.
45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.
45-1014. Installment loans; fees; disposition.
45-1017. Licensees; business, records, and accounts; inspection; expenses; fines; lien.
45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.
45-1026. Installment loans; insurance upon security; licensee may require; restrictions; refunds; when.
45-1032. Surrender of license; effect.
45-1033. License; administrative fine; disciplinary actions; failure to renew.
45-1055. Writing evidencing borrower's obligation; form; copies; fee; licensee; duties.
45-1069. Administrative fine; procedure; lien.

45-1001 Act, how cited.

Sections 45-1001 to 45-1069 shall be known and may be cited as the Nebraska Installment Loan Act.

Source: Laws 2001, LB 53, § 29; Laws 2005, LB 533, § 57.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Department means the Department of Banking and Finance;

(c) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution 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 borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(d) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution 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 borrower's unilateral election to defer repayment or the financial institution's unilateral decision to allow a deferral of repayment;

(e) Director means the Director of Banking and Finance;

(f) Financial institution has the same meaning as in section 8-101;

(g) Licensee means any person who obtains a license under the act; and

(h) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity.

(2) Except as provided in subsection (3) of section 45-1017, no revenue arising under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48.

45-1005 Installment loans; license; application; fee.

Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act shall apply to the department for the license under oath,

on forms prescribed by the department, and pay an original license fee of five hundred dollars. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1941, c. 90, § 5, p. 346; C.S.Supp.,1941, § 45-133; R.S. 1943, § 45-117; Laws 1973, LB 39, § 1; Laws 1979, LB 87, § 2; Laws 1997, LB 555, § 5; Laws 1997, LB 752, § 115; R.S.1943, (1998), § 45-117; Laws 2001, LB 53, § 33; Laws 2005, LB 533, § 58.

45-1006 Installment loans; application hearing; protest; procedure.

(1) When an application for an original installment loan license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the department three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may deny any application for license after hearing. The director shall, in his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held, and operated under, a license to engage in the business of lending money in Nebraska pursuant to the Nebraska Installment Loan Act for at least one calendar year immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the business of lending money, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the Nebraska Installment Loan Act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Source: Laws 1941, c. 90, § 11, p. 349; C.S.Supp.,1941, § 45-139; R.S. 1943, § 45-118; Laws 1997, LB 555, § 6; Laws 1999, LB 396, § 25; R.S.Supp.,2000, § 45-118; Laws 2001, LB 53, § 34; Laws 2005, LB 533, § 59; Laws 2008, LB851, § 25.
Operative date July 18, 2008.

45-1007 Installment loans; license; bond.

(1) Except as otherwise provided in this section, a license shall not be issued until the applicant gives to the department a bond in the penal sum of fifty thousand dollars to be executed by the applicant and a surety company authorized to do business in the State of Nebraska, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations

pertaining to the business of lending money and the prompt payment of any judgment recovered against the applicant, as a licensee, under the Nebraska Installment Loan Act.

(2) The bond or a substitute bond shall remain in effect or the licensee shall immediately cease making loans and the license shall be canceled by the director.

Source: Laws 1941, c. 90, § 31, p. 357; C.S.Supp.,1941, § 45-157; R.S. 1943, § 45-119; Laws 1997, LB 555, § 7; R.S.1943, (1998), § 45-119; Laws 2001, LB 53, § 35; Laws 2003, LB 218, § 13; Laws 2006, LB 876, § 49.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act. The expense of any publication required by this section shall be paid by the applicant licensee.

Source: Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S. 1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54.

Cross References

Administrative Procedure Act, see section 84-920.

45-1014 Installment loans; fees; disposition.

All original license fees and annual renewal fees shall be collected by the department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund. All investigation and examination fees, charges, and costs collected by or paid to the department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund and shall be available for the uses and purposes of the fund.

Source: Laws 1941, c. 90, § 26, p. 355; C.S.Supp.,1941, § 45-154; R.S. 1943, § 45-127; Laws 1969, c. 584, § 46, p. 2373; Laws 1973, LB 39, § 3; Laws 1994, LB 967, § 31; Laws 1995, LB 7, § 41; Laws 1995, LB 599, § 10; R.S.1943, (1998), § 45-127; Laws 2001, LB 53, § 42; Laws 2007, LB124, § 55.

45-1017 Licensees; business, records, and accounts; inspection; expenses; fines; lien.

(1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection constitutes a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-130; Laws 1997, LB 137, § 21; Laws 1997, LB 555, § 13; Laws 1999, LB 396, § 27; R.S.Supp.,2000, § 45-130; Laws 2001, LB 53, § 45; Laws 2004, LB 999, § 38; Laws 2007, LB124, § 56.

Cross References

Administrative Procedure Act, see section 84-920.

45-1024 Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans

charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount

which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging,

collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees; premiums paid for nonfiling insurance; premiums paid on insurance policies covering tangible personal property securing the loan; amounts charged for a debt cancellation contract or a debt suspension contract, as agreed upon by the parties, if the debt cancellation contract or debt suspension contract is a contract of a financial institution and such contract is sold directly by such financial institution or by an unaffiliated, nonexclusive agent of such financial institution in accordance with 12 C.F.R. part 37, as such part existed on January 1, 2006, and the financial institution is responsible for the unaffiliated, nonexclusive agent's compliance with such part; title examinations; credit reports; survey; and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five

hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6)(a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property, as that term is defined in section 45-702, shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Source: Laws 1941, c. 90, § 15, p. 350; C.S.Supp.,1941, § 45-143; Laws 1943, c. 107, § 3, p. 370; R.S.1943, § 45-137; Laws 1957, c. 193, § 1, p. 684; Laws 1963, c. 273, § 2, p. 821; Laws 1963, Spec. Sess., c. 9, § 1, p. 103; Laws 1963, Spec. Sess., c. 7, § 9, p. 93; Laws 1979, LB 87, § 3; Laws 1980, LB 276, § 8; Laws 1982, LB 702, § 1; Laws 1984, LB 681, § 1; Laws 1994, LB 979, § 8; Laws 1995, LB 614, § 1; Laws 1997, LB 555, § 17; Laws 1999, LB 170, § 1; Laws 2000, LB 932, § 30; R.S.Supp.,2000, § 45-137; Laws 2001, LB 53, § 52; Laws 2003, LB 218, § 14; Laws 2004, LB 999, § 40; Laws 2005, LB 533, § 61; Laws 2006, LB 876, § 50.

45-1026 Installment loans; insurance upon security; licensee may require; restrictions; refunds; when.

(1) The following types of insurance or one or more of the following types of insurance may be written in connection with loans made by licensees under the Nebraska Installment Loan Act:

(a) Fire, theft, windstorm, or comprehensive, including fire, theft, and windstorm, fifty dollars or more deductible collision, and bodily injury liability and property damage liability upon motor vehicles;

(b) Fire and extended-coverage insurance upon real property;

(c) Fire and extended-coverage insurance upon tangible personal property, limited to the principal amount of the loan;

(d) Involuntary unemployment or job protection insurance. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be rewritten. Such insurance shall not be required as a condition precedent to the making of such loan; and

(e) Life, health, and accident insurance or any of them, except that the amount of such insurance shall not exceed the total amount to be repaid under the loan contract and the term shall not extend beyond the final maturity date of the loan contract. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be written in connection with such loan. Such insurance shall not be required as a condition precedent to the making of such loan.

(2) In addition to the types of insurance written under subsection (1) of this section by licensees under the act, any other type of insurance or motor club service as defined in section 44-3707 may be provided for the benefit of a licensee's borrower or the borrower's immediate family whether or not in connection with a loan, except that such insurance or motor club service shall not be required as a condition precedent to the making of any loan. Nothing in this subsection alters or eliminates any insurance licensing requirements or certificate of authority requirements under the Motor Club Services Act.

(3) Notwithstanding sections 45-1024 and 45-1025, any gain or advantage, in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or motor club service or the sale thereof shall not be deemed to be an additional or further charge in connection with the loan contract. The insurance premium or motor club service contract fee may be collected from the borrower or financed through the loan contract at the time the loan is made.

(4)(a) Insurance permitted under this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insurable interest of the licensee.

(b) Motor club services permitted under this section shall be obtained through a motor club which holds a certificate of authority under the Motor Club Services Act.

(5) In the event of a renewal of a loan contract, any insurance or motor club service sold pursuant to this section shall be canceled and (a) a refund of the

unearned premium or motor club service contract fee credited or made before new insurance or motor club service of the same type as that being canceled may be rewritten or (b) the holder of the loan contract shall send notice to the buyer within fifteen business days after cancellation of the name, address, and telephone number of the insurance company or motor club which issued the insurance contract or motor club service contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract.

(6) If any insurance or motor club service sold pursuant to this section is canceled or the premium or motor club service contract fee adjusted during the term of the loan contract, any refund of the insurance premium or motor club service contract fee plus the unearned interest thereon received by the holder shall be credited by the holder to the loan contract or otherwise refunded, except to the extent applied toward payment for similar insurance or motor club service protecting the interests of the buyer and the holder or either of them.

(7) If any insurance or motor club service sold pursuant to this section is canceled due to the payment of all sums for which the buyer is liable under a loan contract, the holder of the loan contract shall, upon receipt of payment of all sums due, send notice to the buyer within fifteen business days after payment of the sums due of the name, address, and telephone number of the insurance company or motor club which issued the insurance contract or motor club service contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract. This subsection does not apply if the holder of the loan contract previously credited the refund of the insurance premium or motor club service contract fee to the loan contract or otherwise refunded the insurance premium or motor club service contract fee to the buyer.

Source: Laws 1941, c. 90, § 17, p. 351; C.S.Supp.,1941, § 45-145; R.S. 1943, § 45-139; Laws 1953, c. 155, § 3, p. 491; Laws 1987, LB 306, § 2; Laws 1990, LB 1094, § 1; Laws 1997, LB 555, § 19; R.S.1943, (1998), § 45-139; Laws 2001, LB 53, § 54; Laws 2002, LB 957, § 23; Laws 2006, LB 876, § 51.

Cross References

Motor Club Services Act, see section 44-3701.

45-1032 Surrender of license; effect.

A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender. Surrender of a license (1) shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-1033 for acts committed before the surrender and (2) shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower. The department shall issue a notice of cancellation of the license following such surrender.

Source: Laws 2001, LB 53, § 60; Laws 2005, LB 533, § 62.

45-1033 License; administrative fine; disciplinary actions; failure to renew.

(1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued; or

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3)(a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to

section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

Source: Laws 2001, LB 53, § 61; Laws 2003, LB 218, § 16; Laws 2005, LB 533, § 63; Laws 2007, LB124, § 57.

Cross References

Administrative Procedure Act, see section 84-920.

45-1055 Writing evidencing borrower's obligation; form; copies; fee; licensee; duties.

(1) The licensee shall give to the borrower a copy of any writing evidencing a loan if the writing requires or provides for the signature of the borrower. The writing evidencing the borrower's obligation to pay under a loan shall contain a clear and conspicuous notice in form and content substantially as follows:

NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

(2) Upon written request of a borrower, the licensee shall provide a written statement of the dates and amounts of payments made and the amounts of any default and deferment charges assessed preceding the month in which the request is received and the total amount unpaid as the end of the period covered by the statement and a copy of the loan agreement, security agreement, and a facsimile of any insurance certificate issued as part of the transaction, if applicable. The licensee may charge a reasonable fee for such copies, not to exceed fifty cents per page.

(3) The licensee shall answer in writing, within ten business days after receipt, any written request for payoff information from the borrower or the borrower's 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.

Source: Laws 1979, LB 87, § 18; R.S.1943, (1998), § 45-185; Laws 2001, LB 53, § 83; Laws 2005, LB 533, § 65.

45-1069 Administrative fine; procedure; lien.

(1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by the Nebraska Installment Loan Act or otherwise violated the act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-1033.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-1033 or otherwise violated the Nebraska Installment Loan Act or any rule and regulation or order adopted thereunder, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

Source: Laws 2005, LB 533, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 46
IRRIGATION AND REGULATION OF WATER

Article.

ARTICLE 2
GENERAL PROVISIONS

(e) ADJUDICATION OF WATER RIGHTS

Section

(f) APPLICATION FOR WATER

(g) IRRIGATION WORKS; CONSTRUCTION, OPERATION, AND REGULATION

(j) WATER REUSE PITS

(l) INTRABASIN TRANSFERS

(e) ADJUDICATION OF WATER RIGHTS

46-229.02 Appropriations; preliminary determination of nonuse; notice; order of cancellation; procedure.

(1) If, based upon the results of a field investigation or upon information, however obtained, the department makes preliminary determinations (a) that an appropriation has not been used, in whole or in part, for a beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that the department knows of no reason that constitutes sufficient cause, as provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such appropriation. Such notice shall contain the information required by section 46-229.03, shall be provided in the manner required by such section, and shall be posted on the department's web site. Each owner of the appropriation and any owner of the land under such appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and include any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.

(2) If no owner of the appropriation or of the land under the appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the appropriation in whole or in part. The extent of such cancellation shall not exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's web site and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable. No cancellation under this subsection shall prohibit an irrigation district, a reclamation district, a public power and irrigation district, or a

mutual irrigation company or canal company from asserting the rights provided by subsections (5) and (6) of section 46-229.04.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be canceled, in whole or in part, it shall inform the owners of the appropriation, and any other owners of the land under the appropriation, of such determination.

(4) If the department determines that an owner has provided sufficient information to support the conclusion that the appropriation should be canceled only in part and if (a) the owner or owners filing the notice of contest agree in writing to such cancellation in part and (b) such owner or owners are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3), and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropriation known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's web site and shall be served or published, as applicable, in the manner provided in subsection (2), (3), or (4) of section 46-229.03, as applicable.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's web site and shall be served or published, as applicable, in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and telephone number that may be used to obtain a copy of the order.

(7) A water appropriation that has not been perfected pursuant to the terms of the permit may be canceled by the department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit, except that this subsection does not apply to appropriations to which subsection (2) of section 46-237 applies.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(3), p. 521; Laws 1963, c. 278, § 1, p. 834; Laws 1983, LB 380, § 2; Laws 1984, LB 1000, § 1; Laws 2004, LB 962, § 7; Laws 2006, LB 1226, § 7.

46-229.03 Appropriations; preliminary determination of nonuse; notice; contents; service.

(1) The notice provided by the department in accordance with subsection (1) or (5) of section 46-229.02 shall contain: (a) A description of the appropriation; (b) the number assigned to the appropriation by the department; (c) the date of priority; (d) the point of diversion; (e) if the notice is published, the section or sections of land which contain the lands located under such appropriation; (f) if the notice is served by personal service or by registered or certified mail, a description of the lands which are located under such appropriation, a description of the information used by the department to reach the preliminary determinations of nonuse, and a copy of section 46-229.04; (g) a description of the owner's options in response to the notice; (h) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what constitutes sufficient cause for nonuse; (i) a copy of the form that such owner may file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is mailed; (j) the location where the owner may obtain a form to file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is published; and (k) if the notice is provided in accordance with subsection (5) of section 46-229.02, the date, time, and location of the hearing.

(2) For any owner whose name and address are known to the department or can be reasonably obtained by the department, the notice shall be served by personal service or by registered mail or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is listed as an owner of the land involved, on the records of the county clerk or register of deeds for the county in which the land is located.

(3) For any owner whose name and address are not known to the department and cannot reasonably be obtained by the department, such notice shall be served by publication in a legal newspaper published or of general circulation in any county in which the place of diversion is located and in a legal newspaper published or of general circulation in each county containing land for which the right to use water under the appropriation is subject to cancellation. Each such publication shall be once each week for three consecutive weeks.

(4) Landowners whose property under such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once each week for three consecutive weeks.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(4), p. 521; Laws 1957, c. 242, § 39, p. 852; Laws 1973, LB 186, § 5; Laws 1980, LB 648, § 1; Laws 1986, LB 960, § 32; Laws 1987, LB 140, § 3; Laws 2004, LB 962, § 8; Laws 2006, LB 1226, § 8.

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 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.

(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;

(f) Legal proceedings prevented or restricted use of the water; or

(g) 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 or state program or such land previously was 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 that land since that land was last under that program.

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 reinitiate 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 reinitiated 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.

(f) APPLICATION FOR WATER

46-241 Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste

shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309, § 1; Laws 2000, LB 900, § 115; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

(g) IRRIGATION WORKS; CONSTRUCTION, OPERATION, AND REGULATION

46-257 Repealed. Laws 2005, LB 335, § 83.

46-277 Repealed. Laws 2005, LB 335, § 83.

46-278 Repealed. Laws 2005, LB 335, § 83.

(j) WATER REUSE PITS

46-283 Legislative findings.

The Legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within ephemeral natural streams.

Source: Laws 1980, LB 908, § 1; Laws 2008, LB798, § 1.
Effective date July 18, 2008.

46-286 Ephemeral natural stream, defined.

An ephemeral natural stream shall mean that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation. The portion of a natural stream that is shown as an intermittent stream on the most recent United States Geological Survey topographic quadrangle map published prior to July 18, 2008, shall be considered an ephemeral natural stream unless the Department of Natural Resources has investigated the stream and determined that the stream or a reach of the stream is perennial or intermittent and subject to Chapter 46, article 2. The department's determination for the purposes of this section shall be adopted and promulgated in rule or regulation.

Source: Laws 1980, LB 908, § 4; Laws 2006, LB 508, § 1; Laws 2008, LB798, § 2.
Effective date July 18, 2008.

46-287 Irrigation water reuse pit; reusing ground water; exempt from certain provisions.

Notwithstanding any other provision of law, any person intending to or in the process of reusing ground water from an irrigation water reuse pit located within an ephemeral natural stream shall be exempt from the provisions of Chapter 46, article 2, which would otherwise apply to such pits, and from the provisions of section 46-637.

Source: Laws 1980, LB 908, § 5; Laws 2008, LB798, § 3.
Effective date July 18, 2008.

(l) INTRABASIN TRANSFERS

46-290 Appropriation; application to transfer or change; contents; approval.

(1)(a) Except as provided in this section and sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the use of such appropriation to a location other than the location specified in the permit, (ii) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, or (iii) to change the purpose for which the water is to be used under a natural-flow, storage, or storage-use appropriation to a purpose not at that time permitted under the appropriation shall apply for approval of such transfer or change to the Department of Natural Resources.

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the location of use, type of appropriation, or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a mortgage or deed of trust for the land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the Director of Natural Resources to be consistent with section 46-294, may be approved subject to the following:

(a) A natural-flow appropriation for direct out-of-stream use may be changed to a natural-flow appropriation for aboveground reservoir storage or for intentional underground water storage;

(b) A natural-flow appropriation for intentional underground water storage may be changed to a natural-flow appropriation for direct out-of-stream use or for aboveground reservoir storage;

(c) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 to 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115;

(d) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that the resulting appropriation for induced ground water recharge would be consistent with subdivisions (2)(a)(i) and (ii) of section 46-235; and

(e) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (e) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.

Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall be subject to the statutes, rules, and regulations that apply to the type of appropriation to which the change has been made.

(4) The Legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued pursuant to section 46-2,115 are specific to the location identified in the appropriation. Neither type of appropriation shall be transferred to a different location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved, such transfers and changes may be approved if the purpose is (a) to augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.

For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days after the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to the same location of use, type of appropriation, and purpose of use as prior to such approval.

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use

appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(e) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

Source: Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131; Laws 2004, LB 962, § 16; Laws 2006, LB 1226, § 10.

46-291 Application; review; notice; contents; comments.

(1) Upon receipt of an application filed under section 46-290 for a transfer in the location of use of an appropriation, the Department of Natural Resources shall review it for compliance with this subsection. The Director of Natural Resources may approve the application without notice or hearing if he or she determines that: (a) The appropriation is used and will continue to be used exclusively for irrigation purposes; (b) the only lands involved in the proposed transfer are (i) lands within the quarter section of land to which the appropriation is appurtenant, (ii) lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant, or (iii) lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (c) after the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer; (d) all the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (e) the transfer will not result in a change in the point of diversion or the point of diversion will be changed but the change meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion will not move above or below a tributary stream or a constructed river return or a constructed drain; and (f) the transfer will not diminish the water supply available for or otherwise adversely affect any other surface water appropriator. If transfer of an appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as such transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental underground water storage

area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (1)(f) of this section.

(2) If after reviewing an application filed under section 46-290 the director determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's web site, to be sent by certified mail to each holder of a mortgage or deed of trust that is identified by the applicant pursuant to subdivision (1)(b)(v) of section 46-290 and to any entity owning facilities currently used or proposed to be used for purposes of diversion or delivery of water under the appropriation, and to be published at the applicant's expense at least once each week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the appropriation is appurtenant and, if applicable, in at least one newspaper of general circulation in each county containing lands to which the appropriation is proposed to be transferred.

(3) The notice shall contain: (a) A description of the appropriation; (b) the number assigned to such appropriation in the records of the department; (c) the date of priority; (d) if applicable, a description of the land or stream reach to which such water appropriation is proposed to be transferred; (e) if applicable, the type of appropriation to which the appropriation is proposed to be changed; (f) if applicable, the proposed change in the purpose of use; (g) whether the proposed transfer or change is to be permanent or temporary and, if temporary, the duration of the proposed transfer or change; and (h) any other information the director deems relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

(4) The notice shall state (a) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (b) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication of the notice.

(5) Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of any county containing land to which the appropriation is appurtenant and, if applicable, the county board of any county containing land to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in such county. The filing of any such comments by a county board shall not make the county a party in the application process, but such comments shall be considered by the director in determining pursuant to section 46-294 whether the proposed transfer or change is in the public interest.

Source: Laws 1983, LB 21, § 3; Laws 2000, LB 900, § 132; Laws 2004, LB 962, § 17; Laws 2006, LB 1226, § 11; Laws 2008, LB798, § 4. Effective date July 18, 2008.

46-294.01 Appropriation; temporary transfer; filings required.

Whenever a temporary transfer is approved in accordance with sections 46-290 to 46-294, the applicant shall, within sixty days after the order of

approval of the Department of Natural Resources, cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) The permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effected; and (3) the order of the Director of Natural Resources approving the temporary transfer. Whenever renewal of a temporary transfer is approved pursuant to section 46-294.02, the applicant shall, within sixty days after such approval, cause a copy of the order of the director approving such renewal to be filed with the county clerk or register of deeds of such county. Such documents shall be indexed to the land subject to the appropriation prior to the transfer. The applicant shall file with the department, within ninety days after the department's order of approval, proof of filing with the county clerk or register of deeds. Failure to file such proof of filing within such ninety-day time period shall be grounds for the director to negate any prior approval of the transfer or renewal.

Source: Laws 2004, LB 962, § 21; Laws 2006, LB 1226, § 12.

(m) UNDERGROUND WATER STORAGE

46-299 Permittee; authorized to levy a fee or assessment; limitation.

Any person who has obtained a permit for intentional underground water storage and recovery of such water pursuant to section 46-233, 46-240, 46-241, 46-242, or 46-297 may, subject to section 46-2,101, levy a fee or assessment against any person for the right or probable right to withdraw or otherwise use such stored water. Such fee or assessment may be levied against any land in connection with which such underground water storage has occurred or probably will occur, and may be varied based on the degree to which underground water storage has occurred or will occur. No fee or assessment shall represent more than the fair market value of such recharge, except that a fee or assessment may include a sum sufficient to amortize the operation, maintenance, repair, and capital costs of the project, apportioned on the degree to which recharge has occurred or is likely to occur, and on the degree to which any surface water is delivered.

Source: Laws 1983, LB 198, § 13; Laws 2008, LB798, § 5.
Effective date July 18, 2008.

(n) INSTREAM APPROPRIATIONS

46-2,112 Permit to appropriate water for instream flows; hearing; when; notice; director; powers.

A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of a pending review shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not later than fourteen years and ten months after the permit was granted or after the date of the director's action following the last such review, whichever is later, and such notice shall be mailed to the appropriator of record and posted on the department's web site. The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to such

review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. The appropriator of record shall, within the six-week period, file written documentation of the continued use of the appropriation. If no requests for hearing are received and if the director is satisfied with the information provided by the appropriator of record that the appropriation continues to be beneficially used and is in the public interest, the director shall issue an order stating such findings. If requested by any interested person, or on his or her own motion based on the comments and information filed, the director shall schedule a hearing. If a hearing is held, the purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

Source: Laws 1997, LB 877, § 2; Laws 2000, LB 900, § 144; Laws 2004, LB 962, § 28; Laws 2006, LB 1226, § 13.

(p) WATER POLICY TASK FORCE

46-2,136 Duties.

The Water Policy Task Force shall discuss the issues described in section 46-2,131 and such related issues as it deems appropriate, shall identify options for resolution of such issues, and shall make recommendations to the Legislature and the Governor relating to any water policy changes the task force deems desirable so long as the task force is authorized by the Legislature.

Source: Laws 2002, LB 1003, § 6; Laws 2006, LB 1226, § 14.
Termination date December 31, 2009.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; 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 Environmental Quality, 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 64 Federal Register 68822, 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 64 Federal Register 68822, 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.

ARTICLE 6

GROUND WATER

(a) REGISTRATION OF WATER WELLS

Section

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

(e) SPACING OF WATER WELLS

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

(a) REGISTRATION OF WATER WELLS

46-601.01 Terms, defined.

For purposes of Chapter 46, article 6:

(1)(a) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Source: Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1; Laws 2004, LB 962, § 34; Laws 2007, LB701, § 17.

Cross References

For additional definitions, see section 46-656.07.

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 on-line 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 registration 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 Environmental Quality 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 Environmental Quality.

(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 886, § 1; Laws 1986, LB 310, § 42; 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.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Old wells not in use, duty to fill, see sections 54-311 and 54-315.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

46-602.01 Water well in management area; duties; prohibited acts; penalty.

Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a licensed water well contractor as defined in section 46-1213 or a licensed pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of

use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Source: Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4; Laws 2006, LB 508, § 3; Laws 2007, LB463, § 1141.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

46-604 Registration form; copies; disposition.

The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the licensed water well contractor as defined in section 46-1213.

Source: Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5; Laws 2007, LB463, § 1142.

46-609 Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.

(1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty days after completion of such water well.

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other than its intended purpose for use for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall

be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB701, § 19.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-644 Permits; duration; revocation; procedure.

Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than five years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

Source: Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182; Laws 2007, LB701, § 20.

(e) SPACING OF WATER WELLS

46-655.01 Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

(1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

(a) The legal description of the land being considered as a public water supply wellfield; and

(b) Written consent of the owner of the land considered for a public water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

(a) Provide a copy of the notice of intent or notice of renewal to the owners of land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice;

(b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and

(c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

(i) One thousand feet; or

(ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.

(b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.

(c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.

(6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, all affected natural resources districts, the owner of the land described in the notice of intent, and the owners of all land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice of intent of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Source: Laws 2004, LB 962, § 40; Laws 2006, LB 1226, § 16.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-676.01 Applicability of act.

The Industrial Ground Water Regulatory Act does not apply to any public water supplier providing, or intending to provide, ground water for industrial purposes nor does the act apply to any person who is using, or intends to use, ground water for industrial purposes that is supplied by a public water supplier.

Source: Laws 2005, LB 335, § 75.

46-677 Withdrawal of ground water for industrial purposes; permit required; when.

(1) Except as provided in sections 46-676.01 and 46-678.01:

(a) Any person who desires to withdraw and transfer ground water from aquifers located within the State of Nebraska for industrial purposes shall,

prior to commencing construction of any water wells, obtain from the director a permit to authorize such withdrawal and transfer of such ground water; and

(b) Any person who prior to April 23, 1993, has withdrawn ground water from aquifers located in the State of Nebraska for industrial purposes may file an application for a permit to authorize the transfer of such ground water at any time.

(2) For purposes of this section, industrial purposes includes manufacturing, commercial, and power generation uses of water and commercial use includes, but is not limited to, maintenance of the turf of a golf course.

Source: Laws 1981, LB 56, § 3; Laws 1993, LB 131, § 34; Laws 1993, LB 789, § 6; Laws 2002, LB 458, § 5; Laws 2005, LB 335, § 76.

46-683 Permit; issuance; consideration; conditions.

(1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be limited to:

(a) Possible adverse effects on existing surface or ground water users;

(b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;

(c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;

(d) The economic benefit of the applicant's proposed use;

(e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;

(f) Any waivers of liability from existing users filed with the director;

(g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and

(h) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. If a hearing is held, the director shall issue such written order within ninety days of the hearing.

Source: Laws 1981, LB 56, § 9; Laws 2003, LB 619, § 13; Laws 2006, LB 1226, § 17.

46-686 Injured person; remedies available.

Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 46-682, may bring an action for damages or injunctive or other relief for any injury done to his or her land or water rights by the holder of a permit issued pursuant to section 46-683. Nothing in the Industrial Ground Water Regulatory

Act shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 1981, LB 56, § 12; Laws 2005, LB 335, § 77.

46-688 Director; rules and regulations.

The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Industrial Ground Water Regulatory Act. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 46-678, taking into account the current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 46-683.

Source: Laws 1981, LB 56, § 14; Laws 2005, LB 335, § 78.

46-690 Act, how cited.

Sections 46-675 to 46-690 shall be known and may be cited as the Industrial Ground Water Regulatory Act.

Source: Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10; Laws 2005, LB 335, § 79.

(h) TRANSFERS

46-691.03 Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.

(1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in addition to any permit required pursuant to section 46-252 or 46-735 or subdivision (1)(k) of section 46-739.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

(a) Whether the proposed use is a beneficial use of ground water;

(b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;

(c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, transport, and use, to comply

with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;

(g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 46-713 to 46-719; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Source: Laws 2004, LB 962, § 97; Laws 2006, LB 1226, § 18.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section
46-701. Act, how cited.
46-702. Declaration of intent and purpose; legislative findings.
46-705. Act; how construed.
46-706. Terms, defined.
46-707. Natural resources district; powers; enumerated.
46-712. Management area; establishment; when; hearing; notice; procedure; district; powers and duties.
46-713. Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations.
46-714. River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties.
46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

46-701 Act, how cited.

Sections 46-701 to 46-754 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Source: Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19.

46-702 Declaration of intent and purpose; legislative findings.

The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient to meet the reasonable needs of all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the reasonable and beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally and regionally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

The Legislature finds that given the impact of extended drought on areas of the state, the economic prosperity and future well-being of the state is advanced by providing economic assistance in the form of providing bonding authority for certain natural resources districts as defined in section 2-3226.01 and in the creation of the Water Resources Cash Fund to alleviate the adverse economic impact of regulatory decisions necessary for management, protection, and conservation of limited water resources. The Legislature specifically finds that, consistent with the public ownership of water held by the state for the benefit of its citizens, any action by the Legislature, or through authority conferred by it to any agency or political subdivision, to provide economic assistance does not establish any precedent that the Legislature in sections 2-3226.01 and 61-218 or in the future must or should purchase water or provide compensation for any economic impact resulting from regulation necessary pursuant to the terms of Laws 2007, LB 701.

Source: Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4; Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1; Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20; Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656; Laws 1996, LB 108, § 8; Laws 2003, LB 619, § 10; R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42; Laws 2007, LB701, § 21.

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 Environmental Quality 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.

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 Environmental Quality 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 Environmental Quality 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; and

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (9), or (10) 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.

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.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-707 Natural resources district; powers; enumerated.

(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 meters to be placed on any water wells for the purpose of acquiring water use data;

(d) 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;

(e) 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;

(f) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(g) Issue cease and desist orders, following ten 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.

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.

46-712 Management area; establishment; when; hearing; notice; procedure; district; powers and duties.

(1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 46-718, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-711. If necessary to determine whether a management area should be designated, the district may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area. Notice of the hearing shall be published as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3)(a) Within ninety days after the hearing, the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

(b) If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt one or more controls authorized by section 46-739 to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

(c) The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(4) Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297.

(6) If a ground water management area has been adopted by a district under this section that includes one or more controls authorized by subdivision (1)(f) or (1)(m) of section 46-739, the district may request the Department of Natural Resources to conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water natural-flow appropriations in the area, river basin, subbasin, or reach of the management area, and the department may determine that the stay is in the public interest. The stay may include provisions for exceptions to be granted for beneficial uses as described in subsection (3) of section 46-714 or for a project that provides hydrological benefit to the area of the stay and may include provisions that the stay may be rescinded based on new or additional information that may become available.

Source: Laws 1982, LB 375, § 7; Laws 1986, LB 894, § 28; Laws 1991, LB 51, § 2; Laws 1993, LB 3, § 13; R.S.1943, (1993), § 46-673.05; Laws 1996, LB 108, § 25; Laws 1997, LB 188, § 1; Laws 2000, LB 900, § 195; R.S.Supp.,2002, § 46-656.19; Laws 2004, LB 962, § 52; Laws 2006, LB 1226, § 22.

46-713 Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations.

(1)(a) By January 1 of each year beginning in 2006 and except as otherwise provided in this section and section 46-720, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new ground water uses in each of the state's river

basins and shall issue a report that describes the results of the evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more subbasins or reaches. A river basin, subbasin, or reach for which an integrated management plan has been or is being developed pursuant to sections 46-715 to 46-717 or pursuant to section 46-719 shall not be evaluated unless it is being reevaluated as provided in subsection (2) of this section. For each river basin, subbasin, or reach evaluated, the report shall describe (i) the nature and extent of use of both surface water and ground water in each river basin, subbasin, or reach, (ii) the geographic area within which the department preliminarily considers surface water and ground water to be hydrologically connected and the criteria used for that determination, and (iii) the extent to which the then-current uses affect available near-term and long-term water supplies. River basins, subbasins, and reaches designated as overappropriated in accordance with subsection (4) of this section shall not be evaluated by the department.

(b) Based on the information reviewed in the evaluation process, the department shall arrive at a preliminary conclusion for each river basin, subbasin, and reach evaluated as to whether such river basin, subbasin, or reach presently is fully appropriated without the initiation of additional uses. The department shall also determine if and how such preliminary conclusion would change if no additional legal constraints were imposed on future development of hydrologically connected surface water and ground water and reasonable projections are made about the extent and location of future development in such river basin, subbasin, or reach.

(c) In addition to the conclusion about whether a river basin, subbasin, or reach is fully appropriated, the department shall include in the report, for informational purposes only, a summary of relevant data provided by any interested party concerning the social, economic, and environmental impacts of additional hydrologically connected surface water and ground water uses on resources that are dependent on streamflow or ground water levels but are not protected by appropriations or regulations.

(d) In preparing the report, the department shall rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department shall provide sufficient documentation to allow these data, information, methodologies, and conclusions to be independently replicated and assessed. Upon request by the department, state agencies, natural resources districts, irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, municipalities, and other water users and stakeholders shall provide relevant data and information in their possession. The Department of Natural Resources shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this section.

(2) The department shall complete a reevaluation of a river basin, subbasin, or reach for which an integrated management plan has been or is being prepared if the department has reason to believe that a reevaluation might lead to a different determination about whether such river basin, subbasin, or reach is fully appropriated or overappropriated. A decision to reevaluate may be reached by the department on its own or in response to a petition filed with the department by any interested person. To be considered sufficient to justify a reevaluation, a petition shall be accompanied by supporting information show-

ing that (a) new scientific data or other information relevant to the determination of whether the river basin, subbasin, or reach is fully appropriated or overappropriated has become available since the last evaluation of such river basin, subbasin, or reach, (b) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (c) the department erred in its interpretation or application of the information available when the river basin, subbasin, or reach was last evaluated. If a petition determined by the department to be sufficient is filed before March 1 of any year, the reevaluation of the river basin, subbasin, or reach involved shall be included in the next annual report prepared in accordance with subsection (1) of this section. If any such petition is filed on or after March 1 of any year, the department may defer the reevaluation of the river basin, subbasin, or reach involved until the second annual report after such filing.

(3) A river basin, subbasin, or reach shall be deemed fully appropriated if the department determines based upon its evaluation conducted pursuant to subsection (1) of this section and information presented at the hearing pursuant to subsection (4) of section 46-714 that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural-flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(4)(a) A river basin, subbasin, or reach shall be deemed overappropriated if, on July 16, 2004, the river basin, subbasin, or reach is subject to an interstate cooperative agreement among three or more states and if, prior to such date, the department has declared a moratorium on the issuance of new surface water appropriations in such river basin, subbasin, or reach and has requested each natural resources district with jurisdiction in the affected area in such river basin, subbasin, or reach either (i) to close or to continue in effect a previously adopted closure of all or part of such river basin, subbasin, or reach to the issuance of additional water well permits in accordance with subdivision (1)(k) of section 46-656.25 as such section existed prior to July 16, 2004, or (ii) to temporarily suspend or to continue in effect a temporary suspension, previously adopted pursuant to section 46-656.28 as such section existed prior to July 16, 2004, on the drilling of new water wells in all or part of such river basin, subbasin, or reach.

(b) Within sixty days after July 16, 2004, the department shall designate which river basins, subbasins, or reaches are overappropriated. The designation shall include a description of the geographic area within which the department has determined that surface water and ground water are hydrologically connected and the criteria used to make such determination.

Source: Laws 2004, LB 962, § 53; Laws 2006, LB 1226, § 23.

46-714 River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties.

(1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Such notice to natural resources districts shall be by certified mail. The notice shall be addressed to the manager of the natural resources district or his or her designee and shall include the signature of the Director of Natural Resources. Immediately upon receipt of such notice by the natural resources district, there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

(2) If the department preliminarily determines a river basin, subbasin, or reach to be fully appropriated and has identified the existence of hydrologically connected surface water and ground water in such river basin, subbasin, or reach, stays shall also be imposed:

(a) On the construction of any new water well in the area covered by the determination unless a permit with conditions imposed by the natural resources district has been issued prior to the determination. Such conditions shall meet the objectives of subsection (3) of section 46-715 and may include, but are not limited to, conditions in accordance with subsection (6) of section 46-739. Any well constructed pursuant to such permit shall be completed in accordance with section 46-738; and

(b) On the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated.

Such additional stays shall begin ten days after the first publication, in a newspaper of statewide circulation, of the notice of the preliminary determination that the river basin, subbasin, or reach is fully appropriated.

(3) Exceptions to the stays imposed pursuant to subsection (1), (2), (9), or (10) of this section shall exist for (a) test holes, (b) dewatering wells with an intended use of one year or less, (c) monitoring wells, (d) wells constructed pursuant to a ground water remediation plan under the Environmental Protection Act, (e) water wells designed and constructed to pump fifty gallons per minute or less, except that no two or more water wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute, (f) water wells for range livestock, (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety, (h)

water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace or, if applicable, the historic consumptive use of the surface water use it is to replace, (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred, (j) water wells and increases in ground water irrigated acres for which a variance is granted by the applicable natural resources district for good cause shown, (k) subject to any conditions imposed by the applicable natural resources district, to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that were permitted prior to the effective date of the determination made in subsection (1) of this section and completed in accordance with section 46-738 but were not used for irrigation prior to that effective date, (l) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that are constructed after the effective date of the stay in accordance with a permit granted by that natural resources district prior to the effective date of the stay, (m) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of section 46-233, (n) surface water uses and increases in surface water irrigated acres for which a variance is granted by the department for good cause shown, and (o) water wells for which permits have been approved by the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act prior to the effective date of the stay.

(4) Except as otherwise provided in this section, any stay imposed pursuant to subsections (1) and (2) of this section shall remain in effect for the affected river basin, subbasin, or reach until the department has made a final determination regarding whether the river basin, subbasin, or reach is fully appropriated and, if the department's final determination is that the river basin, subbasin, or reach is fully appropriated, shall remain in effect as provided in subsection (12) of this section. Within the time period between the dates of the preliminary and final determinations, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources districts. The department shall also hold one or more public hearings not more than ninety days after the first publication of the notice required by subsection (1) of this section. Notice of the hearings shall be provided in the same manner as the notice required by such subsection. Any interested person may appear at such hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether the stays on new uses should be terminated.

(5) Within thirty days after the final hearing under subsection (4) of this section, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status

of the river basin, subbasin, or reach. If the final determination is that the river basin, subbasin, or reach is fully appropriated, the department, at the same time, shall (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the department considers surface water and ground water to be hydrologically connected in the river basin, subbasin, or reach and describe the methods and criteria used in making that determination. The department shall provide notice of its decision to continue or terminate the stays in the same manner as the notice required by subsection (1) of this section.

(6) If the department's final determination is that the river basin, subbasin, or reach is not fully appropriated, the department shall provide notice of such determination as provided in subsection (1) of this section, the stays imposed pursuant to subsections (1) and (2) of this section shall terminate immediately, and no further action pursuant to subsections (7) through (12) of this section and sections 46-715 to 46-719 shall be required.

(7) Within ninety days after a final determination by the department that a river basin, subbasin, or reach is fully appropriated, an affected natural resources district may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated. Notice of the hearings shall be published as provided in section 46-743.

(8) Within forty-five days after a natural resources district's final hearing pursuant to subsection (7) of this section, the natural resources district shall decide (a) whether to terminate the stay on new water wells in all or part of the natural resources district subject to the stay and (b) whether to terminate the stay on increases in ground water irrigated acres. If the natural resources district decides not to terminate the stay on new water wells in any geographic area, it shall also decide whether to exempt from such stay the construction of water wells for which permits were issued prior to the issuance of the stay but for which construction had not begun prior to issuance of the stay. If construction of water wells for which permits were issued prior to the stay 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.

(9) Whenever the department designates a river basin, subbasin, or reach as overappropriated, each previously declared moratorium on the issuance of new surface water appropriations in the river basin, subbasin, or reach shall continue in effect. The department shall also provide prompt notice of such designation to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Immediately upon receipt of such notice by a natural resources district, there shall be a stay on the issuance of new water well construction permits in any portion of such natural resources district that is within the hydrologically connected area designated by the department. The department shall also notify the public of its designation of such river basin, subbasin, or reach as overappropriated and of the geographic area involved in such designation. Such notice shall be published once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspapers as are deemed appropriate by the department to provide general notice in the river basin, subbasin, or reach.

(10) Beginning ten days after the first publication of notice under subsection (9) of this section in a newspaper of statewide circulation, there shall also be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to such date and if no permit for construction of the water well has been issued previously by either the department or the natural resources district, (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated, and (c) on the use of an existing surface water appropriation to increase the number of acres historically irrigated in the affected area.

(11) Within ninety days after a designation by the department of a river basin, subbasin, or reach as overappropriated, a natural resources district that encompasses any of the hydrologically connected area designated by the department may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area, (b) the issuance of new water well construction permits in such area, or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for such purpose shall be provided pursuant to section 46-743. Prior to the scheduling of a natural resources district hearing on the question of whether to terminate any such stay, the department and the affected natural resources district shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources district.

(12) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (6), (8), or (11) of this section, (b) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the department and the affected natural resources districts and has taken effect, (c) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the Interrelated Water Review Board and has taken effect, (d) the department has completed a reevaluation pursuant to subsection (2) of section 46-713 and has determined that the affected river basin, subbasin, or reach is not fully appropriated or overappropriated, or (e) the stay expires pursuant to this subsection. Such stay may be imposed initially for not more than three years following the department's designation of the river basin, subbasin, or reach as overappropriated or the department's final determination that a river basin, subbasin, or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the department and the affected natural resources district for not more than two additional years if necessary to allow the development, adoption, and implementation of an integrated management plan pursuant to sections 46-715 to 46-719.

Source: Laws 2004, LB 962, § 54; Laws 2006, LB 1226, § 24.

Cross References

Environmental Protection Act, see section 81-1532.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun after the date the river basin, subbasin, or reach was designated as overappropriated or was preliminarily determined to be fully appropriated in accordance with section 46-713.

(4)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (3) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (3) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first

increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (4) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (4) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(5) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (3)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23.

46-719 Interrelated Water Review Board; created; members; powers and duties.

(1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

(b) Not more than two members of the board shall reside in the geographic area involved in the dispute. A person is not eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to the person, a member of his or her immediate family, or a business with which the person is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the Open Meetings Act.

(c) For purposes of subsections (2) and (3) of this section, action may be taken by a vote of three of the board's five members. For purposes of subsections (4) and (5) of this section, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 46-715 to 46-718, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would

be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 46-743. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 46-715, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent with subsection (3) of section 46-715. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 46-744.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 46-718 or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground water controls. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board

shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Source: Laws 2004, LB 962, § 59; Laws 2006, LB 1226, § 26.

Cross References

Open Meetings Act, see section 84-1407.

46-724 Contamination; not point source; Director of Environmental Quality; duties; hearing; notice.

If the Director of Environmental Quality 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 Environmental Quality 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 Environmental Quality 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 Environmental Quality 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.

46-739 Management area; controls authorized; procedure.

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may allocate the amount of ground water that may be withdrawn by ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-740;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (i) transfers of ground water off the land where the water is withdrawn or (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural

Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

(n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-740 and 46-741, 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 will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided

in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

(c) For a management area in a river basin or part of a river basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-712, regarding the controls before implementing them.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are

necessary to produce the benefits for which the incentive program is established.

Source: Laws 1975, LB 577, § 11; Laws 1978, LB 217, § 2; Laws 1979, LB 26, § 4; Laws 1980, LB 643, § 13; Laws 1981, LB 146, § 9; Laws 1982, LB 375, § 19; Laws 1983, LB 506, § 1; Laws 1983, LB 23, § 7; Laws 1984, LB 1071, § 8; Laws 1986, LB 894, § 25; Laws 1993, LB 131, § 30; R.S.1943, (1993), § 46-666; Laws 1996, LB 108, § 31; Laws 1997, LB 877, § 6; Laws 2000, LB 900, § 196; Laws 2001, LB 135, § 2; Laws 2001, LB 667, § 9; R.S.Supp.,2002, § 46-656.25; Laws 2004, LB 962, § 79; Laws 2006, LB 1226, § 27.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-740 Ground water allocation; limitations and conditions.

(1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-739. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) Except as permitted pursuant to subsections (4) through (6) of section 46-739, if annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

(3) Unless an integrated management plan, a rule, or an order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a municipality, within an area determined by the Department of Natural Resources to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources district;

(b)(i) For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. Water for commercial and industrial uses may be limited as specified in subdivision (b)(iii) of this subsection.

(ii) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west, and shall not be less than two hundred gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than two hundred fifty gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.

(iii) Prior to January 1, 2026, any new or expanded single commercial or single industrial development served by any municipality within the fully appropriated or overappropriated area which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715;

(c) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations outlined in subdivisions (3)(a) and (b) of this section. Any permanent reduction in consumptive use of water associated with municipal growth, including governmental, industrial, and commercial growth, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such municipality is located; and

(d) To qualify for the exemption specified in subsection (3) of this section, any city of the metropolitan class, city of the primary class, city of the first class, or city of the second class shall file a conservation plan with the natural resources district, if required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify for such exemption.

(4) On and after January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (a) the amount of water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the greatest annual use prior to January 1, 2026, for uses specified in subdivision (3)(b) of this section plus the per capita allowance described in subdivision (3)(b)(ii) of this section. On and after January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715. Each municipality may be subject to controls adopted pursuant to such section for amounts in excess of the allocations.

(5) Unless an integrated management plan, rule, or order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a nonmunicipal commercial or industrial water user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Prior to January 1, 2026, the minimum annual allocation for a nonmunicipal commercial or industrial user shall be the greater of either (i) the amount specified in a permit issued pursuant to the Industrial Ground Water Regulatory Act or (ii) the amount necessary to achieve the commercial or industrial use,

including all new or expanded uses that consume less than twenty-five million gallons annually. Any increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715;

(b) Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715. This subdivision does not apply to a water user described in this subdivision that is regulated by the Industrial Ground Water Regulatory Act and the United States Nuclear Regulatory Commission;

(c) On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 shall be the amount specified in subdivision (5)(a) or (b) of this section;

(d) On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715; and

(e) Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than twenty-five million gallons, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such nonmunicipal industrial or commercial user is located.

Source: Laws 1982, LB 375, § 12; Laws 1991, LB 51, § 5; Laws 1993, LB 439, § 3; R.S.1943, (1993), § 46-673.10; Laws 1996, LB 108, § 32; Laws 2001, LB 135, § 3; R.S.Supp.,2002, § 46-656.26; Laws 2004, LB 962, § 80; Laws 2006, LB 1226, § 28.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-754 Interrelated Water Management Plan Program; created; grants; commission; duties; use.

The Interrelated Water Management Plan Program is created for the purpose of facilitating and funding the duties of districts arising under the Nebraska Ground Water Management and Protection Act. The program shall function as a grant program administered by the Nebraska Natural Resources Commission and the Department of Natural Resources upon recommendations of the commission using funds appropriated for the program. The commission shall develop guidelines and limitations for grant requests for funding such district's duties, including studies required to carry out those duties. Grant requests shall be made to the commission for review in a manner and form prescribed by the commission. The amounts requested and approved shall be supported by a minimum local revenue match comprising twenty percent of the total project

cost. The Director of Natural Resources shall expend funds to implement the commission's recommendations for fiscal support under the program only upon the commission's approval.

Source: Laws 2006, LB 1226, § 20.

ARTICLE 10
RURAL WATER DISTRICT

Section
46-1011. Plans and specifications; filing; approval; benefit units; water sale.
46-1018. Board; powers and duties; compensation; budget; audit; reports.

46-1011 Plans and specifications; filing; approval; benefit units; water sale.

Plans and specifications for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the director, the Department of Health and Human Services, and the secretary of the district. No construction of any such improvement shall begin until the plans and specifications for such improvement have been approved by the director and the Department of Health and Human Services, except that if the improvement involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review the plans and specifications for such improvement and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder.

The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he or she desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Source: Laws 1967, c. 279, § 11, p. 752; Laws 1979, LB 546, § 2; Laws 1996, LB 1044, § 262; Laws 2000, LB 900, § 232; Laws 2001, LB 667, § 10; Laws 2007, LB296, § 205.

46-1018 Board; powers and duties; compensation; budget; audit; reports.

It shall be the duty of the chairperson of the board of directors to keep in repair such works as are constructed by the district as authorized in sections 46-1001 to 46-1020 and to operate such works, all as directed by the board. Such works shall be operated in conformance with the rules and regulations of the Department of Health and Human Services relating to water supply systems. The chairperson and all persons who may perform any service or labor as provided in sections 46-1001 to 46-1020 shall be paid such just and reasonable compensation as may be allowed by the board of directors, and such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary to produce sufficient revenue required by such budget,

cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting.

Source: Laws 1967, c. 279, § 18, p. 755; Laws 1996, LB 1044, § 263; Laws 2007, LB296, § 206.

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

Cross References

Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Emergency Management Act, exception from licensure, see section 81-829.55 et seq.
Health and Human Services Act, see section 81-3110.
License Suspension Act, see section 43-3301.
Nebraska Regulation of Health Professions Act, see section 71-6201.
State Board of Health, duties, see section 71-2610 et seq.
Uniform Credentialing Act, see section 38-101.

Section

46-1201 Act, how cited.

Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Practice Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18; Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9; Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1; Laws 2007, LB463, § 1143.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1202 Purposes of act.

The purposes of the Water Well Standards and Contractors' Practice Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors, pump installation contractors, water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10; Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11; Laws 2007, LB463, § 1144.

46-1203 Definitions, where found.

For purposes of the Water Well Standards and Contractors' Practice Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19; Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11; Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3; Laws 2007, LB463, § 1145.

46-1204.01 Abandoned water well, defined.

Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Health

and Human Services, and (3) for which the notice of abandonment required by subsection (2) of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or licensed pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7; Laws 2007, LB296, § 207; Laws 2007, LB463, § 1146.

46-1205 Board, defined.

Board means the Water Well Standards and Contractors' Licensing Board.

Source: Laws 1986, LB 310, § 5; Laws 2007, LB463, § 1147.

46-1205.01 Licensed natural resources ground water technician, defined.

Licensed natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the department indicating that he or she is a licensed natural resources ground water technician.

Source: Laws 2001, LB 133, § 4; Laws 2007, LB463, § 1148.

46-1207 Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265; Laws 2007, LB296, § 208.

46-1207.01 Illegal water well, defined; landowner; petition for reclassification; when.

(1) Illegal water well means any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard;

(f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98; Laws 2007, LB463, § 1149.

46-1208 Installation of pumps and pumping equipment, defined.

Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Source: Laws 1986, LB 310, § 8; Laws 1993, LB 131, § 40; Laws 2006, LB 508, § 4.

46-1209 Licensed pump installation contractor, defined.

Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13; Laws 2007, LB463, § 1150.

46-1210 Licensed pump installation supervisor, defined.

Licensed pump installation supervisor means any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14; Laws 2007, LB463, § 1151.

46-1212 Water well, defined.

Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation described in subdivisions (1)(b) and (1)(c) of section 46-601.01.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100; Laws 2007, LB701, § 24.

46-1213 Licensed water well contractor, defined.

Licensed water well contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager,

or owner-operator of any business engaged in the construction or decommissioning of water wells.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15; Laws 2007, LB463, § 1152.

46-1214 Licensed water well drilling supervisor, defined.

Licensed water well drilling supervisor means any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16; Laws 2007, LB463, § 1153.

46-1214.01 Licensed water well monitoring technician, defined.

Licensed water well monitoring technician means any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17; Laws 2007, LB463, § 1154.

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 Environmental Quality 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.

Cross References

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-158 to 38-174.

46-1218 Board; terms; vacancy.

(1) The terms of members of the board appointed pursuant to subdivisions (1)(e) and (f) of section 46-1217 shall be extended by one year to five-year terms, and the successors to members appointed pursuant to subdivisions (1)(a) through (f) of such section shall be appointed for five-year terms. No appointed member shall be appointed to serve more than two consecutive full five-year terms.

(2) Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18; Laws 2007, LB463, § 1156.

46-1219 Board; meetings; quorum.

(1) Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board.

(2) A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19; Laws 2007, LB463, § 1157.

46-1219.01 Repealed. Laws 2007, LB 463, § 1319.

46-1220 Repealed. Laws 2007, LB 463, § 1319.

46-1222 Repealed. Laws 2007, LB 463, § 1319.

46-1223 Examinations; requirements; fee; hardship licensing.

(1) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation

practices and techniques, and such other knowledge as deemed appropriate by the board.

(2) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within twelve months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(3) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8; Laws 2007, LB463, § 1159.

Cross References

For provisions regarding licensure under Uniform Credentialing Act, see section 38-101.

46-1223.01 Department; develop program.

The department shall develop a program that is designed to train individuals to become licensed natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours.

Source: Laws 2001, LB 133, § 7; Laws 2007, LB463, § 1160.

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 on-line 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 less than fifty gallons per minute 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 fifty gallons per minute or more. 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 Environmental Quality 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.

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.

46-1225 License renewal; continuing competency required.

The board shall adopt rules and regulations to establish continuing competency requirements for persons licensed under the Water Well Standards and

Contractors' Practice Act. Continuing education is sufficient to meet continuing competency requirements.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2; Laws 2007, LB463, § 1162.

Cross References

For provisions regarding continuing competency requirements under the Uniform Credentialing Act, see sections 38-145 and 38-146.

46-1226 Repealed. Laws 2007, LB 463, § 1319.

46-1227 Department; well and equipment standards; adopt rules and regulations.

The department, with the approval of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a licensed water well contractor, a licensed pump installation contractor, a licensed water well drilling supervisor, a licensed pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18; Laws 2007, LB463, § 1163.

Cross References

Old wells not in use, duty to fill, see sections 54-311 and 54-315.

46-1227.01 Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.

(1) All water well construction and monitoring, pump and pumping equipment installation and repair, and decommissioning shall be accomplished following the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) A licensed water well contractor may have supervisory authority over all employees.

(3) A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over noncredentialed employees.

(4) A licensed pump installation contractor may have supervisory authority over all employees.

(5) A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over noncredentialed employees.

(6) A licensed water well monitoring technician may work independently and shall not have supervisory authority.

(7) A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any credentialed or noncredentialed persons.

(8) An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his or her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

Source: Laws 2007, LB463, § 1158.

46-1229 License required; application; qualifications.

Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department in accordance with section 38-130. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223 and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9; Laws 2007, LB463, § 1164.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1230 Licensees; proof of insurance.

Each applicant for an initial license as a licensed water well contractor or as a licensed pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest. Proof of insurance shall be maintained and submitted annually for the term of the active license.

Source: Laws 1986, LB 310, § 30; Laws 2007, LB463, § 1165.

46-1231 License; application; qualifications.

Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a license in his or her respective trade. A license shall be issued to every applicant who successfully passes the examination for such license and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Any individual employed by a licensed water well contractor or a licensed pump installation contractor who is not deemed to qualify as a licensed water well drilling

supervisor or licensed pump installation supervisor may apply for a license in his or her respective trade in the same manner as the licensed water well drilling supervisor or the licensed pump installation supervisor. A supervisor holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a supervisor in such trade on such date. A technician holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a technician in such trade on such date.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10; Laws 2007, LB463, § 1166.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1232 Repealed. Laws 2007, LB 463, § 1319.

46-1233 Water well construction or decommissioning; equipment installation or repair; supervision required.

(1) Any person constructing a water well, installing or repairing pumps onsite, or decommissioning a water well shall do such work in accordance with the rules and regulations developed under the Water Well Standards and Contractors' Practice Act.

(2) A water well shall be constructed, pumps and pumping equipment shall be installed and repaired onsite, and water wells shall be decommissioned by a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor, except that an individual may construct a water well or install and repair pumps and pumping equipment onsite on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. No water well shall be opened or the seal broken by any person other than an owner of the water well unless (a) the opening or breaking of the seal is carried out by a licensed water well monitoring technician or a licensed natural resources ground water technician, (b) the opening or breaking of the seal is carried out by a licensed operator of a public water system in the course of his or her employment or someone under his or her supervision, or (c) a state electrical inspector in the course of his or her employment.

(3) For purposes of this section, supervision means the ready availability of the person licensed pursuant to the Water Well Standards and Contractors' Practice Act for consultation and direction of the activities of any person not licensed who assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20; Laws 2007, LB463, § 1167.

46-1233.01 Repealed. Laws 2007, LB 463, § 1319.

46-1235 License; disciplinary actions; grounds.

In cases other than those relating to failure to meet the requirements for an initial license, the department may deny, refuse renewal of, suspend, or revoke

licenses or may take other disciplinary action in accordance with section 38-196 for the grounds found in sections 38-178 and 38-179 and for any of the following acts or offenses:

(1) Violation of the Water Well Standards and Contractors' Practice Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(2) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;

(3) Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;

(4) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or

(5) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47; Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21; Laws 2003, LB 245, § 8; Laws 2007, LB296, § 210; Laws 2007, LB463, § 1168.

46-1235.01 Repealed. Laws 2007, LB 463, § 1319.

46-1235.02 Repealed. Laws 2007, LB 463, § 1319.

46-1236 Repealed. Laws 2007, LB 463, § 1319.

46-1237 Repealed. Laws 2007, LB 463, § 1319.

46-1237.01 Repealed. Laws 2007, LB 463, § 1319.

46-1237.02 Repealed. Laws 2007, LB 463, § 1319.

46-1237.03 Repealed. Laws 2007, LB 463, § 1319.

46-1238 License; when required; action to enjoin activities.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Uniform Credentialing Act or the Water Well Standards and Contractors' Practice Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24; Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22; Laws 2006, LB 508, § 7; Laws 2007, LB463, § 1169.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1239 Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8; Laws 2007, LB463, § 1170.

46-1240 Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.

Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24; Laws 2007, LB463, § 1171.

46-1240.02 Repealed. Laws 2007, LB 463, § 1319.

46-1240.03 Repealed. Laws 2007, LB 463, § 1319.

46-1240.04 Repealed. Laws 2007, LB 463, § 1319.

46-1240.05 Repealed. Laws 2007, LB 463, § 1319.

46-1241 Water well log required; contents.

Any owner of a water well or a licensed water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

(1) Legal description of the water well;

(2) Description and depth of geologic materials encountered;

(3) Depth and diameter or dimension of constructed water well and test hole;

(4) Depth and diameter or dimension of excavated hole if applicable;

(5) Depth of formation stabilizer or gravel pack and size of particles if used;

(6) Depth and thickness of grout or other sealing material if applicable;

(7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;

(8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

(9) Static water level;

(10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;

(11) Yield of water well in gallons per minute or gallons per hour if applicable;

(12) Signature of water well contractor;

(13) Dates drilling commenced and construction completed;

(14) Intended use of the water well;

(15) Name and address of the owner;

(16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;

(17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Practice Act of any person, other than the owner of the water well, who constructed the water well; and

(18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25; Laws 2007, LB463, § 1172.

ARTICLE 14

DECOMMISSIONING WATER WELLS

Section
46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.

Section
46-1405. Natural resources district; cost-sharing program; qualification for funding.

46-1404 Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405 Natural resources district; cost-sharing program; qualification for funding.

Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

(1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

(2) Applies to all water wells in the district;

(3) Is available for at least thirty water wells per year; and

(4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of five hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section
46-1601. Act, how cited.

Section

Section

46-1601 Act, how cited.

Sections 46-1601 to 46-1670 shall be known and may be cited as the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 1.

46-1602 Definitions, where found.

For purposes of the Safety of Dams and Reservoirs Act, the definitions found in sections 46-1603 to 46-1634 apply.

Source: Laws 2005, LB 335, § 2.

46-1603 Abandonment, defined.

Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

Source: Laws 2005, LB 335, § 3.

46-1604 Adverse consequences, defined.

Adverse consequences means negative impacts that may occur upstream, downstream, or at locations remote from the dam, including, but not limited to, loss of human life, economic loss including property damage, and lifeline disruption.

Source: Laws 2005, LB 335, § 4.

46-1605 Alterations, defined.

Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the department, but does not include maintenance and repair of the dam to retain its initial structural integrity.

Source: Laws 2005, LB 335, § 5.

46-1606 Application approval, defined.

Application approval means authorization in writing issued by the department to an owner who has applied to the department for permission to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

Source: Laws 2005, LB 335, § 6.

46-1607 Approval to operate, defined.

Approval to operate means authorization in writing issued by the department to an owner who has completed construction, reconstruction, enlargement, or alteration of a dam.

Source: Laws 2005, LB 335, § 7.

46-1608 Appurtenant works, defined.

Appurtenant works include, but are not limited to: Structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

Source: Laws 2005, LB 335, § 8.

46-1609 Breach, defined.

Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Source: Laws 2005, LB 335, § 9.

46-1610 Completion certification, defined.

Completion certification means a statement signed by the design engineer, certifying the completion of work on a dam in conformance with the approved plans and specifications.

Source: Laws 2005, LB 335, § 10.

46-1611 Dam, defined.

(1) Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

(2) Dam does not include:

(a) An obstruction in a canal used to raise or lower water;

(b) A fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department;

(c) Canals, including the diversion structure, and levees; or

(d) Water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Source: Laws 2005, LB 335, § 11.

46-1612 Days, defined.

Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

Source: Laws 2005, LB 335, § 12.

46-1613 Department, defined.

Department means the Department of Natural Resources.

Source: Laws 2005, LB 335, § 13.

46-1614 Director, defined.

Director means the Director of Natural Resources.

Source: Laws 2005, LB 335, § 14.

46-1615 Emergency, defined.

Emergency includes, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam that may be construed as unsafe or threatening to life.

Source: Laws 2005, LB 335, § 15.

46-1616 Engineer, defined.

Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Source: Laws 2005, LB 335, § 16.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

46-1617 Enlargement, defined.

Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

Source: Laws 2005, LB 335, § 17.

46-1618 Hazard potential classification, defined.

Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including, but not limited to, safety, structural integrity, or flood routing capacity.

Source: Laws 2005, LB 335, § 18.

46-1619 High hazard potential, defined.

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Source: Laws 2005, LB 335, § 19.

46-1620 Incremental, defined.

Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

Source: Laws 2005, LB 335, § 20.

46-1621 Low hazard potential, defined.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Source: Laws 2005, LB 335, § 21.

46-1622 Maximum storage, defined.

Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

Source: Laws 2005, LB 335, § 22.

46-1623 Minimal hazard potential, defined.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

Source: Laws 2005, LB 335, § 23.

46-1624 Normal storage, defined.

Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Source: Laws 2005, LB 335, § 24.

46-1625 Owner, defined.

Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam:

(1) The United States Government and its departments, agencies, and bureaus;

(2) The state and its departments, institutions, agencies, and political subdivisions;

(3) A municipal or quasi-municipal corporation;

(4) A public utility;

(5) A district;

(6) A person;

(7) A duly authorized agent, lessee, or trustee of any person or entity listed in this section; and

(8) A receiver or trustee appointed by a court for any person or entity listed in this section.

Source: Laws 2005, LB 335, § 25.

46-1626 Person, defined.

Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

Source: Laws 2005, LB 335, § 26.

46-1627 Probable, defined.

Probable means likely to occur and reasonably expected.

Source: Laws 2005, LB 335, § 27.

46-1628 Probable maximum flood, defined.

Probable maximum flood means the most severe flood that is considered probable at a site.

Source: Laws 2005, LB 335, § 28.

46-1629 Reconstruction, defined.

Reconstruction means partial or complete removal and replacement of an existing dam.

Source: Laws 2005, LB 335, § 29.

46-1630 Removal, defined.

Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

Source: Laws 2005, LB 335, § 30.

46-1631 Reservoir, defined.

Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

Source: Laws 2005, LB 335, § 31.

46-1632 Significant hazard potential, defined.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Source: Laws 2005, LB 335, § 32.

46-1633 Storage elevation, defined.

Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

Source: Laws 2005, LB 335, § 33.

46-1634 Top of dam elevation, defined.

Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of foundation and embankment.

Source: Laws 2005, LB 335, § 34.

46-1635 Purposes of act.

The purposes of the Safety of Dams and Reservoirs Act are to regulate all dams and associated reservoirs for the protection of public health, safety, and welfare and to minimize the adverse consequences associated with the potential failure of such dams and reservoirs.

Source: Laws 2005, LB 335, § 35.

46-1636 Applicability of other law.

The Safety of Dams and Reservoirs Act does not relieve the owner or operator of a dam or reservoir from obtaining any necessary approvals from the department under sections 46-233 to 46-241 or from any other local, state, or federal regulatory authority.

Source: Laws 2005, LB 335, § 36.

46-1637 Regulation by political subdivisions; restrictions; conditions.

(1) Except as provided in subsections (2) and (4) of this section, no city, village, or county may, by ordinance or resolution enacted by the legislative body thereof or adopted by the people, (a) regulate, supervise, or provide for the regulation or supervision of any dams and associated reservoirs or the construction, reconstruction, enlargement, repair, alteration, operation, breach, removal, or abandonment thereof or (b) limit the size or the impounding capacity of a dam if such action would conflict with the power and authority vested in the department pursuant to the Safety of Dams and Reservoirs Act.

(2) A city, village, or county may adopt ordinances or resolutions (a) regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that are not within the state's jurisdiction and are not subject to regulation, owned, or operated by another public agency or body or (b) which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to, roads and fences.

(3) A city, village, or county may institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if a breach-inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting such overlay zoning.

(4) The Safety of Dams and Reservoirs Act does not preempt or supersede any local zoning ordinances, resolutions, rules, or regulations regarding special use permits enacted by a political subdivision with respect to permit applications for livestock waste control facilities.

Source: Laws 2005, LB 335, § 37.

46-1638 Plans and specifications; responsibility of engineer.

All plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams and supervision of construction shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.

Source: Laws 2005, LB 335, § 38.

46-1639 Immunity from liability; when.

(1) No action shall be brought against the state, the department, or its agents or employees for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation thereof pursuant to the Safety of Dams and Reservoirs Act, including, but not limited to, any of the following:

(a) Design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment;

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam;

(c) Control and regulation of the dam;

(d) Measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or

(e) Failure to act.

(2) The Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Source: Laws 2005, LB 335, § 39.

46-1640 Orders and approval; effect.

The findings and orders of the department, an application approval, and an approval to operate any dam issued by the department are final, conclusive, and binding upon all owners and state agencies, regulatory or otherwise, as to the safety of design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam.

The department may report all dam incidents as defined by the National Performance of Dams Program to the National Performance of Dams Program archive.

Source: Laws 2005, LB 335, § 40.

46-1641 Change of ownership; notification.

The owner of any dam subject to the Safety of Dams and Reservoirs Act shall notify the department of any change in the ownership of the dam. Notification

shall be in such form and include such evidence of ownership as the director may by rule and regulation require.

Source: Laws 2005, LB 335, § 41.

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 Environmental Quality 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.

46-1643 Administrative or judicial recourse; not affected.

The Safety of Dams and Reservoirs Act does not deprive the owner of any administrative or judicial recourse to the courts to which such owner is entitled under the laws of this state.

Source: Laws 2005, LB 335, § 43.

46-1644 Department; employ personnel.

The department shall employ an engineer and such individuals otherwise qualified by training and experience in the design, inspection, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams as necessary to carry out the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 44.

46-1645 Consulting board required; when; liability for costs.

When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested in writing by the owner, the department shall appoint a consulting board of three or more consultants to report to the department on the safety features involved. The cost and expense of a consulting board, if appointed at the request of an owner, shall be paid by the owner.

Source: Laws 2005, LB 335, § 45.

46-1646 Dams; review and approval required; when.

(1) The department shall review and approve the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property as provided in the Safety of Dams and Reservoirs Act.

(2) No person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval by the department.

(3) An owner of a dam who has entered into a cooperative agreement with the department pursuant to subdivision (2)(d) of section 46-1663 shall be deemed to be in compliance with the act.

Source: Laws 2005, LB 335, § 46.

46-1647 Potentially hazardous dams; emergency action plans.

(1) In order to protect life and property, the owner of every high hazard potential dam shall develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dam. In order to protect life and property, the department may require the owners of any significant hazard potential dam to develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dams.

(2) Such emergency action plan shall include, but not be limited to, the following elements:

(a) Emergency notification plan with flowchart;

(b) A statement of purpose;

(c) A project description;

(d) Emergency detection, evaluation, and classification;

(e) General responsibilities;

(f) Preparedness;

(g) Inundation maps or other acceptable description of the inundated area; and

(h) Appendices.

(3) For purposes of evaluating the adequacy of an emergency action plan, the department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted under this section. The department shall accept emergency action plans developed for dams under a federal dam safety program.

(4) If the department determines that a dam constitutes an immediate risk to life or property, the department shall order the owner to take such action as is necessary to remove such risk.

Source: Laws 2005, LB 335, § 47.

46-1648 Right of entry upon private property; when; immunity.

In making any investigation or inspection necessary to enforce or implement the Safety of Dams and Reservoirs Act, the department or its representatives, upon reasonable notice, may enter upon private property of the dam and reservoir owner as necessary. 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 for prosecution for trespass when performing their official duties.

Source: Laws 2005, LB 335, § 48.

46-1649 Department; investigations and studies.

(1) The department may investigate and gather or cause the owner to gather such data, including advances made in safety practices elsewhere, as may be

needed for a proper review and study of the various features of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams.

(2) The department may make or cause the owner to make such watershed investigations and studies as are necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam.

(3) The department may make or cause the owner to make such seismic investigations and studies as may be necessary to keep abreast of developments affecting seismic stability of a dam.

Source: Laws 2005, LB 335, § 49.

46-1650 Department; enforcement; powers.

(1) The department may take any administrative or legal action necessary for the enforcement of the Safety of Dams and Reservoirs Act.

(2) An action or proceeding under this section may be initiated whenever any owner or any person acting as an agent of any owner:

(a) Fails to comply with the requirements imposed by the act or by any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act; or

(b) Commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act.

(3) Any action or proceeding under this section shall be initiated either administratively or in a court in a jurisdiction in which:

(a) The dam, area of hazard potential, or some part thereof exists;

(b) The person named in the complaint has its principal place of business; or

(c) The person named in the complaint resides.

Source: Laws 2005, LB 335, § 50.

46-1651 Rules and regulations.

(1) The department may adopt and promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, abandonment, and periodic testing of emergency action plans of dams to carry out the purposes of the Safety of Dams and Reservoirs Act. Such rules and regulations may also include, but are not limited to, establishing:

(a) Standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) Requirements for operation of dams, including operational plans to be prepared and implemented by owners;

(c) Requirements for monitoring, inspection, and reporting of conditions affecting the safety of dams; and

(d) Requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

(2) In adopting rules and regulations applicable to dams which may have a high hazard potential or a significant hazard potential, the department may consider:

(a) The state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) The economic impact of a failure of a structure upon the state and its citizens; and

(c) The relationship of dams in hydrologic management in the watershed as a whole.

Source: Laws 2005, LB 335, § 51.

46-1652 Construction or enlargement of dam; application for approval; contents.

(1) Construction of any new dam or the enlargement of any dam shall not commence until the owner has applied for and obtained from the department written application approval of plans and specifications.

(2) A separate application for each dam shall be filed with the department upon forms provided by the department. Plans and specifications signed and sealed by the design engineer shall accompany the application.

(3) The application shall provide the following information:

(a) The name and address of the owner;

(b) The name and address of the applicant, if different from the owner;

(c) The name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;

(d) The location, type, size, purpose, and height of the proposed dam;

(e) The reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;

(f) Plans for proposed permanent instrument installations in the dam;

(g) The area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimates, if available;

(h) Maps and design drawings showing plans, elevations, and sections of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analyses, to determine safety, adequacy, and suitability of design;

(i) The estimated construction cost of the dam; and

(j) Such other pertinent information as the department requires.

(4) The department may, when in its judgment it is necessary, also require the following:

(a) Data concerning subsoil and rock foundation conditions and the materials involved in the construction of the dam;

(b) Investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;

(c) Investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and

(d) Other appropriate information.

(5) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

Source: Laws 2005, LB 335, § 52.

46-1653 Modifications to existing dam; application for approval; contents; exemption.

(1) Before commencing the reconstruction or alteration of a dam or the abandonment, breach, or removal of a dam so that it no longer constitutes a dam, the owner shall file an application and secure the written application approval of the department.

(2) The application shall give such pertinent information or data concerning the dam as may be required by the department.

(3) The application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval.

(4) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

(5) In case of an emergency in which the department declares that repairs or breaching of the dam are necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner or by the department at the owner's expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner.

(6) The proposed repairs or breaching shall conform to any orders issued by the department.

Source: Laws 2005, LB 335, § 53.

46-1654 Application approval; issuance; public hearing.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved. Approval under the act and approval under such sections shall be issued simultaneously.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54.

46-1655 Fees.

(1) The application for approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam shall be accompanied by a filing fee as established by rule and regulation of the department but not to exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height.

(2) Only one filing fee shall be collected for an enlargement by flashboards, sandbags, earthen levees, gates, or other works, devices, or obstructions which are from time to time to be removed and replaced or opened and shut and thereby operated so as to vary the surface elevation of the reservoir.

(3) A dam subject to the Safety of Dams and Reservoirs Act and for which plans and specifications have been approved prior to September 4, 2005, shall not be required to pay any additional fee or submit an additional application for approval unless such dam requires reconstruction, enlargement, alteration, breach, removal, or abandonment.

(4) An application shall not be considered by the department until the filing fee is received.

(5) Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Dam Safety Cash Fund.

Source: Laws 2005, LB 335, § 55.

46-1656 Dam Safety Cash Fund; created; use; investment.

The Dam Safety Cash Fund is created. The fund shall consist of fees credited pursuant to section 46-1655 and any money specifically appropriated to the fund by the Legislature. Money in the fund shall not be subject to any fiscal-year limitation or provision for lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department. Money in the fund may be expended by the department for costs incurred by

the department in the administration of the Safety of Dams and Reservoirs 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 2005, LB 335, § 56.

Cross References

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

46-1657 New or modified dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of a new or reconstructed dam and reservoir or of the enlargement of a dam and reservoir, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the work as actually completed. Such supplementary materials may include, but need not be limited to, the following as determined by the department:

(a) A record of all geological boreholes and grout holes and grouting;

(b) A record of permanent location points, benchmarks, and instruments embedded in the structure;

(c) A record of tests of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and

(d) A record of initial seepage flows and embedded instrument readings.

(2) In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

(3) An approval to operate shall be issued by the department upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

Source: Laws 2005, LB 335, § 57.

46-1658 Alteration of dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of the alteration of any dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer, showing or describing the work as actually completed.

(2) An approval to operate shall be issued upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner of the dam shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

Source: Laws 2005, LB 335, § 58.

46-1659 Removal, breach, or abandonment of dam; design engineer; duties; department; powers.

(1) Upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification.

(2) Before final approval of the removal of a dam is issued, the department may inspect the site of the work and determine that all work was accomplished in substantial conformance with the application approval.

(3) Following the removal of a dam, the department may report such removal to the National Performance of Dams Program and to the National Inventory of Dams.

Source: Laws 2005, LB 335, § 59.

46-1660 Approval to operate; department; powers; hearing; notice.

(1) Each approval to operate issued by the department under the Safety of Dams and Reservoirs Act shall contain such terms and conditions as the department may prescribe.

(2) The department shall revoke, suspend, or amend any approval to operate whenever it determines that the dam constitutes a danger to life and property.

(3) Before any approval to operate is revoked by the department, the department shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed to the owner at least thirty days before the date set for the hearing. Any interested persons may appear at the hearing and present their views and objections to the proposed action.

Source: Laws 2005, LB 335, § 60.

46-1661 Complaint; department; duties; unsafe condition; modification.

(1) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department shall cause an inspection and investigation to be made unless the data, records, and inspection reports on file are found adequate to make a determination whether the complaint is valid. The complainant shall be provided with a copy of the official report of the inspection and investigation.

(2) If it is found that an unsafe condition exists, the department shall notify the owner of the dam to take such action as is necessary to correct the condition, including breaching or removal of any dam found to be beyond repair.

Source: Laws 2005, LB 335, § 61.

46-1662 Periodic inspections; when; department; powers and duties.

(1) During the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans and specifications. The department shall require the owner to direct the design engineer to provide adequate supervision during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment and to provide sufficient information to enable the department to determine that conformity with the approved plans and specifications is being attained.

(2) If, after any inspection or investigation, during the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam

or at any time prior to issuance of an approval to operate, it is found by the department that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise his or her plans and specifications. The owner may, pursuant to section 46-1645, request an independent consulting board to review the order of the department.

(3) If at any time during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department finds that the work is not being done in accordance with the approved plans and specifications, the department shall deliver a written notice of noncompliance to the owner. The notice shall be delivered by registered mail or by personal service to the owner, shall state the particulars in which the approved plans and specifications are not being or have not been complied with, and shall order immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and approved by the department.

(4) Failure to comply with the notice delivered under subsection (3) of this section may cause revocation of application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

Source: Laws 2005, LB 335, § 62.

46-1663 Record-keeping requirements; maintenance, operation, and inspection; department; powers.

(1) The department shall require owners to keep original records and any modifications to construction available and in good order.

(2) The department may:

(a) Adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;

(b) Require engineering and geologic investigations to safeguard life and property;

(c) Accept approvals and reports of equivalent inspections prepared for dams under a federal dam safety program; and

(d) Enter into cooperative agreements with the owners of dams which are required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 63.

46-1664 Safety inspections; when; department; powers and duties.

(1) The department shall inspect dams for the purpose of determining their safety. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, and every five years for low hazard potential dams and every five years or more for minimal hazard potential dams. The department may vary the inspection frequency of some sites based on an evaluation of the site performance history. The department may conduct additional inspections at any time. If serious safety concerns are found by the department during the inspections, the department shall require the owner to conduct tests and investigations sufficient for the depart-

ment to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal, or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam.

(2) The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.

Source: Laws 2005, LB 335, § 64.

46-1665 Emergency actions involving a dam; owner; duties; department; duties.

(1) The owner of a dam has the primary responsibility for determining when an emergency exists. When the owner of a dam determines that an emergency exists involving a dam, the owner shall immediately implement the emergency action plan as required pursuant to section 46-1647. The owner shall immediately notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if, in its judgment, either:

(a) The condition of any dam is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods or any other condition threatens the safety of any dam.

(2) In applying the remedial means provided for in this section, the department may in an emergency, with its own forces or by other means at its disposal, do any or all of the following:

(a) Take full charge and control of any dam;

(b) Lower the water level by releasing water from the reservoir;

(c) Completely drain the reservoir;

(d) Perform any necessary remedial or protective work at the site; or

(e) Take such other steps as may be essential to safeguard life and property.

(3) The department shall continue in full charge and control of such dam and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take back full charge and control. The department's taking full charge and control under this section does not relieve the owner of such dam of liability for any negligent acts of such owner.

(4) The department may report emergency actions involving the safety of a dam to the National Performance of Dams Program in a timely manner.

Source: Laws 2005, LB 335, § 65.

46-1666 Violations; penalties.

(1) Violation of the Safety of Dams and Reservoirs Act or of any application approval, approval to operate, order, rule, regulation, or requirement of the

department under the act is a Class V misdemeanor. Each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the act commits a Class IV misdemeanor.

(3) Any owner or any person who engages in the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam or who knowingly does work on or permits work to be done on the dam without the approval of the department or in violation of the act and who fails to immediately notify the department thereof commits a Class V misdemeanor.

Source: Laws 2005, LB 335, § 66.

46-1667 Notice of violation; orders; procedure.

(1) If the department has reason to believe that an owner or other person is violating or has violated the Safety of Dams and Reservoirs Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department issued or adopted pursuant to the act, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the act. The owner or other person shall have thirty days from the mailing of such notice to respond or to request a hearing before the department as to why the owner or other person should not be ordered to cease and desist from the violation. The notice shall inform the owner or other person how to request the hearing and the consequences of failure to request a hearing.

(2) If the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam without having first obtained the required application approval, the department shall issue a temporary order for the owner or person to cease and desist the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment pending final action by the department pursuant to subsection (3) of this section. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated.

(3) After a response to a notice or a hearing pursuant to subsection (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a decision and final order. The decision and final order may take such form as the department determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected may appeal the hearing decision as provided in section 61-207.

(4) If the owner or person continues the violation after the department has issued a final decision and order pursuant to subsection (3) of this section or a temporary order pursuant to subsection (2) of this section, the department may apply for a temporary restraining order or preliminary or permanent injunction from a court of competent jurisdiction. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

Source: Laws 2005, LB 335, § 67.

46-1668 Violations; civil penalty.

(1) Any person who violates the Safety of Dams and Reservoirs Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day for each day the violation continues.

(2) The department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurred.

(3) In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Source: Laws 2005, LB 335, § 68.

46-1669 Appeal.

Any affected person aggrieved by any final order or decision made by the director pursuant to the Safety of Dams and Reservoirs Act may appeal the order as provided in section 61-207. For purposes of this section, affected person means the applicant or holder of any approvals under the act and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by such final order or decision.

Source: Laws 2005, LB 335, § 69.

46-1670 Existing unapproved dams; requirements.

(1) Every owner of a dam subject to the Safety of Dams and Reservoirs Act that was completed prior to September 4, 2005, and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam.

(2) A separate application for each dam shall be filed with the department upon forms supplied by the department and shall include such appropriate information concerning the dam as the department requires.

(3) The department may give notice, by certified mail to the owner's last address of record in the office of the county assessor of the county in which the dam is located, to the owner of dams required under this section to file an application who or which have failed to do so, and a failure to file within sixty days after receipt of such notice shall be punishable as provided in the act.

(4) The department may make inspections of such dams and may require owners of such dams and reservoirs to perform, at the owner's expense, such work or tests as may reasonably be required to disclose information sufficient to enable the department to determine whether to issue an approval to operate or to issue orders directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the department may require an owner to lower the water level of or to drain the reservoir.

(5) If, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued.

(6) If at any time the department finds that the dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. Written notice of the time and place of the hearing shall be mailed, at least thirty days prior to the date set for the hearing, to the owner. Any interested person may appear at the hearing and present his or her views and objections to the proposed action.

Source: Laws 2005, LB 335, § 70.

CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.
6. Community Corrections. 47-619 to 47-639.

ARTICLE 6
COMMUNITY CORRECTIONS

Section
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47-638. Community Corrections Council; contract to conduct study; completion; submission.
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47-619 Act, how cited.

Sections 47-619 to 47-634 shall be known and may be cited as the Community Corrections Act.

Source: Laws 2003, LB 46, § 31; Laws 2006, LB 1113, § 44.

47-620 Legislative intent.

It is the intent of the Legislature that the Community Corrections Act:

(1) Provide for the development and establishment of community-based facilities and programs in Nebraska for adult offenders and encourage the use of such facilities and programs by sentencing courts and the Board of Parole as alternatives to incarceration or reincarceration, in order to reduce prison overcrowding and enhance offender supervision in the community; and

(2) Serve the interests of society by promoting the rehabilitation of offenders and deterring offenders from engaging in further criminal activity, by making community-based facilities and programs available to adult offenders while emphasizing offender culpability, offender accountability, and public safety and

reducing reliance upon incarceration as a means of managing nonviolent offenders.

Source: Laws 2003, LB 46, § 32; Laws 2006, LB 1113, § 45.

47-621 Terms, defined.

For purposes of the Community Corrections Act:

(1) Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for adult offenders, (c) provides programs and services to aid adult offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

(2) Council means the Community Corrections Council;

(3) Director means the executive director of the Community Corrections Council;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Source: Laws 2003, LB 46, § 33; Laws 2005, LB 538, § 12.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

47-622 Community Corrections Council; created.

The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Council is created. For administrative support and budgetary purposes only, the council shall be within the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 2003, LB 46, § 34; Laws 2005, LB 538, § 13.

47-623 Council; members; terms; expenses.

(1) The council shall include the following voting members:

(a) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(b) The Director of Correctional Services;

(c) The chairperson of the Board of Parole;

(d) The Parole Administrator; and

(e) Nine members appointed by the Governor with the approval of a majority of the Legislature, consisting of: One representative from a list of persons nominated by the Nebraska Criminal Defense Attorneys Association; one representative from a list of persons nominated by the Nebraska County Attorneys Association; one full-time officer or employee of a law enforcement agency; one mental health and substance abuse professional; from each congressional district, one provider of community-based behavioral health services; and two at-large members.

(2) The council shall include the following nonvoting members:

(a) The State Court Administrator;

(b) The probation administrator;

(c) Two members of the Legislature, appointed by the Executive Board of the Legislative Council;

(d) Two judges of the district court, appointed by the Chief Justice of the Supreme Court; and

(e) The chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The terms of office for members initially appointed under subdivision (1)(e) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint (a) a representative from law enforcement, a mental health and substance abuse professional, and one at-large member for terms of one year, (b) a representative of the Nebraska Criminal Defense Attorneys Association, one provider of community-based behavioral health services from the first congressional district, one provider of community-based behavioral health services from the third congressional district, and one at-large member for terms of two years, and (c) a representative of the Nebraska County Attorneys Association and a provider of community-based behavioral health services from the second congressional district for terms of three years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The council shall by majority vote elect a chairperson from among the members of the council.

(5) The members of the council shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 2003, LB 46, § 35; Laws 2005, LB 538, § 14; Laws 2006, LB 1113, § 46; Laws 2007, LB296, § 215.

47-624 Council; duties.

The council shall:

(1) Develop standards for eligible community correctional facilities and programs in which offenders can participate, taking into consideration the following factors:

(a) Qualifications of staff;

(b) Suitability of programs;

(c) Offender needs;

(d) Probation population;

(e) Parole population; and

(f) Other applicable criminal justice data;

(2) Develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(3) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(4) Develop, recommend, and review sentencing guidelines for adoption by the Supreme Court as set forth in section 47-630;

(5) Analyze and mandate the consistent use of offender risk assessment tools;

(6) Develop standards for eligibility of probationers and parolees in certain community correctional facilities and programs;

(7) Educate the courts and the Board of Parole about the availability and use of community correctional facilities and programs;

(8) Enter into contracts, if necessary, for carrying out the purposes of the Community Corrections Act;

(9) In order to ensure adequate funding for substance abuse treatment programs for probationers, consult with the probation administrator as provided in section 29-2262.07 and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252;

(10) In order to ensure adequate funding for substance abuse treatment programs for parolees, consult with the Office of Parole Administration as provided in section 83-1,107.02 and develop or assist with the development of programs as provided in subdivision (8) of section 83-1,102;

(11) If necessary to perform the duties of the council, hire, contract for, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff;

(12) Study substance abuse treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(13) Study, develop, and implement minimum standards for the development and use of community correctional facilities and programs;

(14) Develop and implement a plan for statewide use of community correctional facilities and programs;

(15) Grant funds to entities including local governmental agencies, nonprofit organizations, and behavioral health services which will support the intent of the act; and

(16) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Source: Laws 2003, LB 46, § 36; Laws 2005, LB 538, § 15; Laws 2006, LB 1113, § 47.

47-625 Director of the council; duties.

(1) The Governor shall appoint the director of the council.

(2) The director shall:

(a) Supervise, develop, and oversee the actions and proceedings of the council;

(b) Ensure, by working in consultation with the council, consistency between sentencing guidelines and the availability of community correctional facilities and programs;

(c) Administer contracts entered into by the council with community correctional facilities or programs; and

(d) Establish and administer grants, projects, and programs for the operation of the council.

Source: Laws 2003, LB 46, § 37; Laws 2005, LB 538, § 16; Laws 2006, LB 1113, § 49.

47-626 Repealed. Laws 2005, LB 538, § 30.

47-627 Uniform crime data analysis system.

The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The council, the director, and the Supreme Court shall have access to such data to implement the Community Corrections Act and to develop guidelines pursuant to section 47-630.

Source: Laws 2003, LB 46, § 39; Laws 2005, LB 538, § 17.

47-630 Supreme Court guidelines.

(1) In order to facilitate the purposes of the Community Corrections Act, the Supreme Court shall by court rule adopt guidelines for sentencing of persons convicted of certain crimes. The guidelines shall provide that courts are to consider community correctional programs and facilities in sentencing designated offenders, with the goal of reducing dependence on incarceration as a sentencing option for nonviolent offenders.

(2) The guidelines shall specify appropriate sentences for the designated offenders in consideration of factors set forth by rule. The Supreme Court may

provide that a sentence in accordance with the guidelines constitutes a rebuttable presumption.

(3) The guidelines shall be developed and presented to the Supreme Court for such felony offenses and on such time schedule as the Supreme Court and the council deem appropriate.

(4) The council shall develop and periodically review the guidelines and, when appropriate, recommend amendments to the guidelines.

Source: Laws 2003, LB 46, § 42; Laws 2005, LB 538, § 18.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

The Community Corrections Uniform Data Analysis Cash Fund is created. The fund shall be established for administrative purposes only within the Nebraska Commission on Law Enforcement and Criminal Justice and shall be administered by the executive director of the Community Corrections Council. The fund shall consist of money collected pursuant to section 47-633. The fund shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects, as specifically approved by the executive director of the Community Corrections Council. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6.

Cross References

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

47-633 Fees.

In addition to all other court costs assessed according to law, a uniform data analysis fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Community Corrections Uniform Data Analysis Cash Fund.

Source: Laws 2003, LB 46, § 45; Laws 2007, LB322, § 7.

47-634 Receipt of funds by local entity; local advisory committee required; plan required.

For a local entity to receive funds under the Community Corrections Act, the council shall ensure there is a local advisory committee made up of a broad base of community members concerned with the justice system. Submission of a detailed plan including a budget, program standards, and policies as developed by the local advisory committee will be required as set forth by the council. Such funds shall be used for the implementation of the recommendations of the council, the expansion of sentencing options, the education of the

public, the provision of supplemental community-based corrections programs, and the promotion of coordination between state and county community-based corrections programs.

Source: Laws 2006, LB 1113, § 48.

47-635 Act, how cited.

Sections 47-635 to 47-639 shall be known and may be cited as the Probation and Parole Services Study Act.

Source: Laws 2007, LB540, § 1.

47-636 Legislative findings.

The Legislature finds that an indepth analysis of the state's adult and juvenile probation systems and services and the parole system and services is needed to assess the efficacy of coordination of such services and administration of the systems for the benefit of the public and the offenders served by the systems.

Source: Laws 2007, LB540, § 2.

47-637 Study of probation and parole service delivery; legislative findings.

The Legislature finds that:

(1) Nebraska's probation and parole services function administratively under different branches of state government. Probation services are currently under the judicial branch while parole is a function of the Department of Correctional Services in the executive branch;

(2) Probation and parole offender-based services share many characteristics relative to: Community supervision of offenders; risk assessment; enforcement of probation and parole terms and conditions; offender accountability; initiation of filings relating to probation and parole violations; providing offender assistance; and appropriate referral for community-based services, including, but not limited to, substance abuse and mental health evaluation and treatment, housing assistance, and workforce development;

(3) Laws 1971, LB 680, which statutorily established probation service delivery in the judicial branch, provided the authority for parole officers to supervise probationers;

(4) Laws 2003, LB 46, provided for the establishment of community-based programs, services, and facilities for both probationers and parolees. Access to and participation in program services and facilities are shared by probationers and parolees. Probation officers and parole officers are assigned supervision of probationers and parolees that concurrently access and participate in community-based programs and services; and

(5) It is appropriate for the Legislature to commission a study of the effectiveness, efficiency, and responsiveness of Nebraska's current administrative assignment of probation and parole service delivery.

Source: Laws 2007, LB540, § 3.

47-638 Community Corrections Council; contract to conduct study; completion; submission.

(1) The Community Corrections Council shall contract with an organization with expertise in the field of corrections policy and administration to conduct a

study of Nebraska's probation and parole service delivery system. The study shall:

(a) Identify areas of overlap in offender services provided by probation and parole administration and assess the potential for coordination of state-sponsored services and resources which assist in offender rehabilitation;

(b) Assess the optimum methods for delivery of a seamless continuum of offender services within the current probation and parole systems and analyze whether a single system would be to the advantage of state government and offenders;

(c) Undertake a comparative analysis of other states' probation and parole administrative systems to include, but not be limited to, issues relating to personnel salary and benefits structures, hiring standards, officer caseloads, and officer training curriculum; and

(d) Assess service needs of juveniles on probation, their access to services, and the appropriate minimum array of services to be available for juveniles on probation throughout the state.

(2) The study shall be completed on or before December 31, 2007, and a copy of the completed study shall be submitted to the Chief Justice, the Governor, and the Speaker of the Legislature.

Source: Laws 2007, LB540, § 4.

47-639 Study; funding.

The Legislature shall appropriate funds to the Community Corrections Council for purposes of conducting the study required by section 47-638.

Source: Laws 2007, LB540, § 5.

CHAPTER 48
LABOR

ARTICLE 1
WORKERS' COMPENSATION

PART I—COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

PART II—ELECTIVE COMPENSATION

(a) GENERAL PROVISIONS GOVERNING ELECTION

(b) RIGHTS AND LIABILITIES OF THIRD PERSONS

PART I—COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

48-106 Employer; coverage of act; excepted occupations; election to provide compensation.

(1) The Nebraska Workers' Compensation Act shall apply to the State of Nebraska, to every governmental agency created by the state, and, except as provided in this section, to every resident employer in this state and nonresident employer performing work in this state who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

(2) The act shall not apply to:

(a) A railroad company engaged in interstate or foreign commerce;

(b) Service performed by a worker who is a household domestic servant in a private residence;

(c) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees;

(d) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees, whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive. The act shall apply to an employer thirty days after the thirteenth such week; and

(e) Service performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service.

(3) If the employer is the state or any governmental agency created by the state, the exemption from the act under subdivision (2)(d) of this section does not apply.

(4) If the act applies to an employer because the employer meets the requirements of subdivision (2)(d) of this section, all unrelated employees shall be covered under the act and such employees' wages shall be considered for premium purposes.

(5) If an employer to whom the act applies because the employer meets the requirements of subdivision (2)(d) of this section subsequently does not employ ten or more unrelated, full-time employees, such employer shall continue to provide workers' compensation insurance coverage for the employees for the remainder of the calendar year and for the next full calendar year. When the required coverage period has expired, such employer may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(7) Every employer exempted under subdivision (2)(d) of this section who does not elect to provide workers' compensation insurance under subsection (6) of this section shall give all unrelated employees at the time of hiring the following written notice which shall be signed by the unrelated employee and retained by the employer: ''In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly.'' Failure to provide the notice required by this subsection subjects an employer to liability under and inclusion in the act for all unrelated employees on the basis of failure to give such notice.

(8) An exclusion from coverage in any health, accident, or other insurance policy covering a person employed by an employer who is exempt from the act

under this section which provides that coverage under the health, accident, or other insurance policy does not apply if such person is entitled to workers' compensation coverage is void as to such person if such employer has not elected to bring the employees of such employer within the act as provided in subsection (6) of this section.

(9) For purposes of this section:

(a) Agricultural operation means (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products;

(b) Full-time employee means a person who is employed to work one-half or more of the regularly scheduled hours during each pay period; and

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.

Source: Laws 1913, c. 198, § 6, p. 580; R.S.1913, § 3647; Laws 1917, c. 85, § 1, p. 199; C.S.1922, § 3029; Laws 1927, c. 134, § 1, p. 363; C.S.1929, § 48-106; R.S.1943, § 48-106; Laws 1945, c. 111, § 1, p. 356; Laws 1957, c. 202, § 1, p. 707; Laws 1971, LB 572, § 5; Laws 1972, LB 1298, § 1; Laws 1986, LB 811, § 26; Laws 2002, LB 417, § 1; Laws 2003, LB 210, § 1; Laws 2005, LB 13, § 1.

PART II—ELECTIVE COMPENSATION

(a) GENERAL PROVISIONS GOVERNING ELECTION

48-115 Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.

The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state;

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;

(5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act;

(6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;

(9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.

An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If such an executive officer has not elected to bring himself or herself within the provisions of the act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the executive officer is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer.

It is the intent of the Legislature that the changes made to this subdivision by Laws 2002, LB 417, shall apply to policies of insurance against liability arising under the act with an effective date on or after January 1, 2003, but shall not apply to any such policy with an effective date prior to January 1, 2003;

(10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by such person and the termination is filed with the insurer or until the insurer ceases to provide coverage for the business, whichever occurs first. If any such person who is actually engaged in the business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such person contains an exclusion of coverage if such person is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

(11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or

herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Source: Laws 1913, c. 198, § 15, p. 583; R.S.1913, § 3656; Laws 1917, c. 85, § 4, p. 201; Laws 1921, c. 122, § 1, p. 519; C.S.1922, § 3038; Laws 1927, c. 39, § 1, p. 169; C.S.1929, § 48-115; Laws 1933, c. 90, § 1, p. 362; Laws 1941, c. 93, § 1, p. 370; C.S.Supp.,1941, § 48-115; R.S.1943, § 48-115; Laws 1959, c. 222, § 1, p. 782; Laws 1961, c. 233, § 1, p. 689; Laws 1963, c. 282, § 1, p. 841; Laws 1967, c. 291, § 1, p. 793; Laws 1967, c. 289, § 1, p. 788; Laws 1969, c. 391, § 1, p. 1373; Laws 1973, LB 150, § 1; Laws 1973, LB 239, § 2; Laws 1973, LB 25, § 1; Laws 1975, LB 186, § 1; Laws 1976, LB 782, § 14; Laws 1977, LB 199, § 1; Laws 1981, LB 20, § 1; Laws 1983, LB 185, § 1; Laws 1984, LB 776, § 1; Laws 1986, LB 811, § 33; Laws 1986, LB 528, § 6; Laws 1987, LB 353, § 1; Laws 1993, LB 121, § 282; Laws 1994, LB 884, § 63; Laws 1996, LB 43, § 8; Laws 1997, LB 138, § 38; Laws 1997, LB 474, § 2; Laws 1998, LB 1010, § 1; Laws 1999, LB 216, § 1; Laws 2002, LB 417, § 2; Laws 2003, LB 332, § 1; Laws 2005, LB 238, § 1.

(b) RIGHTS AND LIABILITIES OF THIRD PERSONS

48-118 Third-party claims; subrogation.

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents and shall be treated as an advance payment by the employer on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any compensation paid.

Source: Laws 1913, c. 198, § 18, p. 585; R.S.1913, § 3659; C.S.1922, § 3041; Laws 1929, c. 135, § 1, p. 489; C.S.1929, § 48-118; R.S.1943, § 48-118; Laws 1963, c. 283, § 1, p. 844; Laws 1986, LB 811, § 37; Laws 1994, LB 594, § 1; Laws 1997, LB 854, § 1; Laws 2000, LB 1221, § 2; Laws 2005, LB 13, § 2; Laws 2005, LB 238, § 2.

48-118.01 Third-party claims; procedure; attorney's fees.

Before making a claim or bringing suit against a third person by the employee or his or her personal representative or by the employer or his or her workers' compensation insurer, thirty days' notice shall be given to the other potential parties, unless such notice is waived in writing, of the opportunity to join in such claim or action and to be represented by counsel. If a party entitled to notice cannot be found, the clerk of the Nebraska Workers' Compensation Court shall become the agent of such party for giving notice as required in this section. The notice when given to the clerk of the compensation court shall include an affidavit setting forth the facts, including the steps taken to locate such party.

After the expiration of thirty days, for failure to receive notice or other good cause shown, the district court before which the action is pending shall allow either party to intervene in such action, and if no action is pending then the district court in which it could be brought shall allow either party to commence such action. Each party shall have an equal voice in the claim and the prosecution of such suit, and any dispute arising shall be passed upon by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

If the employee or his or her personal representative or the employer or his or her workers' compensation insurer join in prosecuting such claim and are represented by counsel, the reasonable expenses and the attorney's fees shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court before which the case is pending and if no action is pending then by the district court in which such action could be brought.

Source: Laws 2005, LB 13, § 23.

48-118.02 Third-party claims; expenses and attorney's fees; apportionment.

If either party after receiving notice under section 48-118.01 fails, by and through his or her attorney, to join in the third-party claim or suit, such party waives any and all claims or causes of action for improper prosecution of the third-party suit or inadequacy of a settlement made in accordance with section 48-118.04. The party bringing the claim or prosecuting the suit is entitled to deduct from any amount recovered the reasonable expenses of making such recovery, including a reasonable sum for attorney's fees. Such expenses and attorney's fees shall be prorated (1) to the amounts payable to the employer or

his or her workers' compensation insurer under the right of subrogation established in section 48-118 and (2) to the amount in excess of such amount payable to the employer or his or her workers' compensation insurer under the right of subrogation. Such expenses and attorney's fees shall be apportioned by the court between the parties as their interests appear at the time of such recovery.

Source: Laws 2005, LB 13, § 24.

48-118.03 Third-party claims; failure to give notice; effect.

If either party makes a claim or prosecutes a third-party action without giving notice to the other party, the party bringing the claim and prosecuting such action shall not deduct expenses or attorney's fees from the amount payable to the other party.

Source: Laws 2005, LB 13, § 25.

48-118.04 Third-party claims; settlement; requirements.

(1) A settlement of a third-party claim under the Nebraska Workers' Compensation Act is void unless:

(a) Such settlement is agreed upon in writing by the employee or his or her personal representative and the workers' compensation insurer of the employer, if there is one, and if there is no insurer, then by the employer; or

(b) In the absence of such agreement, the court before which the action is pending determines that the settlement offer is fair and reasonable considering liability, damages, and the ability of the third person and his or her liability insurance carrier to satisfy any judgment.

(2) If the employee or his or her personal representative or the employer or his or her workers' compensation insurer do not agree in writing upon distribution of the proceeds of any judgment or settlement, the court, upon application, shall order a fair and equitable distribution of the proceeds of any judgment or settlement.

Source: Laws 2005, LB 13, § 26.

48-118.05 Third-party claims; Workers' Compensation Trust Fund; subrogation rights.

In any case in which an injured employee is entitled to benefits from the Workers' Compensation Trust Fund for injuries occurring before December 1, 1997, as provided in section 48-128 and recovery is had against the third party liable to the employee for the injury, the Workers' Compensation Trust Fund shall be subrogated to the rights of the employee against such third party to the extent of the benefits due to him or her or which shall become due to him or her from such fund, subject to the rights of the employer and his or her workers' compensation insurer.

Source: Laws 2005, LB 13, § 27.

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.

(1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer

fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1.

48-120.02 Managed care plan; certification; application; requirements; conditions; dispute resolution procedure; required; independent medical examiner; compensation court; powers and duties; Attorney General; duties.

(1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be adopted and promulgated by the compensation court. Each application for certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court

prescribes unless earlier revoked or suspended pursuant to subsection (4) or (5) of this section. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical, and hospital services under the managed care plan, together with a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and

hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose a physician to provide medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change the physician initially selected to provide medical, surgical, and hospital services under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, certifications, or registrations of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent medical examiner pursuant to section 48-134.01. No petition may be filed with the compensation court pursuant to section 48-173 solely on the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify a managed care plan or a three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section. A three-judge panel of the compensation court may, after notice and hearing, revoke or suspend the certification of a managed care plan if the panel finds that the plan fails to meet the requirements of this section or that service under the plan is not being provided in accordance with the terms of a certified plan.

(6) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing representatives of a certified managed care plan to appear before a

three-judge panel of the compensation court and show cause as to why the panel should not revoke or suspend certification of the plan pursuant to subsection (4) or (5) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the managed care plan unfairly restricts direct access within the plan, that the plan fails to meet the requirements of this section, or that service under the plan is not being provided in accordance with the terms of a certified plan. The presiding judge shall rule on a motion of the Attorney General pursuant to this subsection and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a suspension or revocation pursuant to subsection (4) or (5) of this section shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas.

(7) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1993, LB 757, § 3; Laws 1998, LB 1010, § 3; Laws 1999, LB 216, § 4; Laws 2000, LB 1221, § 3; Laws 2005, LB 13, § 3.

48-120.03 Generic drugs; use.

Any person or entity that dispenses medicines and medical supplies, as required by section 48-120, shall dispense the generic drug equivalent unless:

(1) A generic drug equivalent is unavailable; or

(2) The prescribing physician specifically provides in writing that a nongeneric drug must be dispensed.

Source: Laws 2005, LB 13, § 28.

48-120.04 Diagnostic Related Group inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.

(1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services; and

(d) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent.

(4) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section until January 1, 2010. Claims for inpatient trauma services prior to January 1, 2010, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. For purposes of this subsection, trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section.

(6) For charges for all other stays or services that are not on the Diagnostic Related Group inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(7) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(8) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(9) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group and the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group.

(10) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (8) of this section.

Source: Laws 2007, LB588, § 2.

48-121 Compensation; schedule; total, partial, and temporary disability; injury to specific parts of the body; amounts and duration of payments.

The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be 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 he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease;

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01. This compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability;

(3) For disability resulting from permanent injury of the classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

If, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or illness, do not adequately compensate the employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under subdivision (1) or (2) of this section, and in such a case the employee shall not be entitled to compensation under this subdivision.

If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be 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 the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation;

(4) For disability resulting from permanent disability, 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; and

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Source: Laws 1913, c. 198, § 21, p. 586; R.S.1913, § 3662; Laws 1917, c. 85, § 7, p. 202; Laws 1919, c. 91, § 2, p. 228; Laws 1921, c. 122, § 1, p. 521; C.S.1922, § 3044; C.S.1929, § 48-121; Laws 1935, c. 57, § 41, p. 210; C.S.Supp.,1941, § 48-121; R.S.1943, § 48-121; Laws 1945, c. 112, § 1, p. 357; Laws 1949, c. 160, § 1, p. 403; Laws 1951, c. 152, § 1, p. 617; Laws 1953, c. 162, § 1, p. 506; Laws 1955, c. 186, § 1, p. 527; Laws 1957, c. 203, § 1, p. 710; Laws 1957, c. 204, § 1, p. 716; Laws 1959, c. 223, § 1, p. 784; Laws 1963, c. 284, § 1, p. 847; Laws 1963, c. 285, § 1, p. 854; Laws 1965, c. 279, § 1, p. 800; Laws 1967, c. 288, § 1, p. 783;

Laws 1969, c. 388, § 3, p. 1360; Laws 1969, c. 393, § 1, p. 1378; Laws 1971, LB 320, § 1; Laws 1973, LB 193, § 1; Laws 1974, LB 807, § 1; Laws 1974, LB 808, § 1; Laws 1974, LB 710, § 1; Laws 1975, LB 198, § 1; Laws 1977, LB 275, § 1; Laws 1978, LB 446, § 1; Laws 1979, LB 114, § 1; Laws 1979, LB 358, § 1; Laws 1983, LB 158, § 1; Laws 1985, LB 608, § 1; Laws 1993, LB 757, § 4; Laws 1999, LB 216, § 5; Laws 2007, LB588, § 4.

48-121.02 State average weekly wage; how determined.

For purposes of section 48-121.01, the state average weekly wage shall be determined by the administrator of the Nebraska Workers' Compensation Court as follows: On or before October 1 of each year, the total insured wages reported to the Department of Labor for the preceding calendar year, excluding federal employees, shall be divided by the average monthly number of employees insured under the Employment Security Law. Such average monthly number of employees shall be determined by dividing the total number of employees insured under the Employment Security Law reported for such calendar year by twelve. The state average annual wage thus obtained shall be divided by fifty-two, and the state average weekly wage thus determined shall be rounded to the nearest whole cent. The state average weekly wage as so determined shall be applicable for the calendar year commencing January 1 following the October 1 determination.

Source: Laws 1993, LB 757, § 6; Laws 2005, LB 13, § 4.

Cross References

Employment Security Law, see section 48-601.

48-125 Compensation; method of payment; delay; review of award; attorney's fees; interest.

(1) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the compensation court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(2) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be

paid for medical services nor shall attorney's fees be charged to the medical providers. If the employer files an application for review before the compensation court from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. If the employee files an application for a review before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a review before the compensation court from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Source: Laws 1913, c. 198, § 25, p. 591; R.S.1913, § 3666; Laws 1917, c. 85, § 9 1/2, p. 208; Laws 1919, c. 91, § 4, p. 234; C.S.1922, § 3048; C.S.1929, § 48-125; Laws 1935, c. 57, § 20, p. 197; C.S.Supp.,1941, § 48-125; R.S.1943, § 48-125; Laws 1973, LB 169, § 1; Laws 1975, LB 187, § 2; Laws 1983, LB 18, § 1; Laws 1986, LB 811, § 43; Laws 1991, LB 732, § 110; Laws 1992, LB 360, § 14; Laws 1999, LB 216, § 6; Laws 2005, LB 13, § 5; Laws 2005, LB 238, § 4.

48-125.02 State employee claim; Prompt Payment Act applicable; other claims; processing of claim; requirements; failure to pay; effect; presumption of payment.

(1) Regarding payment of a claim for medical, surgical, or hospital services for a state employee under the Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

(2) For claims other than claims under subsection (1) of this section regarding payment of a claim for medical, surgical, or hospital services for an employee under the Nebraska Workers' Compensation Act:

(a) The workers' compensation insurer, risk management pool, or self-insured employer shall notify the provider within fifteen business days after receiving a claim as to what information is necessary to process the claim. Failure to notify the provider assumes the workers' compensation insurer, risk management pool, or self-insured employer has all information necessary to pay the claim. The workers' compensation insurer, risk management pool, or self-insured employer shall pay providers in accordance with sections 48-120 and 48-120.04 within thirty business days after receipt of all information necessary to process the claim. Failure to pay the provider within the thirty days will cause the workers' compensation insurer, risk management pool, or self-insured employer to reimburse the provider's billed charges instead of the scheduled or contracted fees;

(b) If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the workers' compensation insurer, risk management pool, or self-insured employer or its clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all; and

(c) Payment of a claim by the workers' compensation insurer, risk management pool, or self-insured employer means the receipt of funds by the provider. If payment is submitted electronically, the payment is presumed to have been received on the date of the electronic verification of receipt by the provider or the provider's clearinghouse. If payment is submitted by mail, the payment is presumed to have been received five business days after the payment has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the payment was received on another day or not received at all.

Source: Laws 2007, LB588, § 3.

Cross References

Prompt Payment Act, see section 81-2401.

48-126 Wages, defined; calculation.

Wherever in the Nebraska Workers' Compensation Act the term wages is used, it shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident. It shall not include gratuities received from the employer or others, nor shall it include board, lodging, or similar advantages received from the employer, unless the money value of such advantages shall have been fixed by the parties at the time of hiring, except that if the workers' compensation insurer shall have collected a premium based upon the value of such board, lodging, and similar advantages, then the value thereof shall become a part of the basis of determining compensation benefits. In occupations involving seasonal employment or employment dependent upon the weather, the employee's weekly wages shall be taken to be one-fiftieth of the total wages which he or she has earned from all occupations during the year immediately preceding the accident, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not fairly represent the earnings of the employee. In such a case, the period for calculation shall be extended so far

as to give a basis for the fair ascertainment of his or her average weekly earnings. In continuous employments, if immediately prior to the accident the rate of wages was fixed by the day or hour or by the output of the employee, his or her weekly wages shall be taken to be his or her average weekly income for the period of time ordinarily constituting his or her week's work, and using as the basis of calculation his or her earnings during as much of the preceding six months as he or she worked for the same employer, except as provided in sections 48-121 and 48-122. The calculation shall also be made with reference to the average earnings for a working day of ordinary length and exclusive of earnings from overtime, except that if the insurance company's policy of insurance provides for the collection of a premium based upon such overtime, then such overtime shall become a part of the basis of determining compensation benefits.

Source: Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 17; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S.Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(1), p. 512; Laws 1957, c. 204, § 3, p. 721; Laws 1986, LB 811, § 45; Laws 2005, LB 238, § 5.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-136 Compensation; voluntary settlements.

The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers' compensation insurer, if any, and in accordance with the Nebraska Workers' Compensation Act. A copy of such settlement, duly verified by all parties, shall be filed with the Nebraska Workers' Compensation Court and no such settlement shall be binding unless the settlement is in accordance with such act.

Source: Laws 1913, c. 198, § 36, p. 595; R.S.1913, § 3677; Laws 1917, c. 85, § 12, p. 209; C.S.1922, § 3059; C.S.1929, § 48-136; Laws 1935, c. 57, § 22, p. 199; C.S.Supp.,1941, § 48-136; R.S.1943, § 48-136; Laws 1978, LB 649, § 2; Laws 1986, LB 811, § 54; Laws 2005, LB 238, § 6.

48-144 Accidents and settlements; reports; death of alien employee; notice to consul.

(1) Reports of accidents and settlements shall be made in a form and manner prescribed by the administrator of the Nebraska Workers' Compensation Court. Such reports, if filed by a workers' compensation insurer on behalf of an employer, shall be deemed to have been filed by the employer.

(2) When an injury results in the death of an employee who is a citizen or subject of a foreign country, the administrator of the compensation court shall, after the death has been reported to the compensation court, at once notify the superior consular officer of the country of which the employee at the time of his or her death was a citizen or subject, and whose consular district embraces the State of Nebraska, or the representative, residing in the State of Nebraska, of such consular officer, whom he or she shall have formally designated as his or her representative by a communication in writing to the compensation court. Such notification shall contain in addition to the name of the employee such

further information as the compensation court may possess respecting the place of birth, parentage, and names and addresses of the dependents of the employee.

Source: Laws 1913, c. 198, § 45, p. 598; R.S.1913, § 3686; Laws 1917, c. 85, § 20, p. 214; C.S.1922, § 3068; C.S.1929, § 48-145; Laws 1935, c. 57, § 30, p. 202; C.S.Supp.,1941, § 48-145; R.S.1943, § 48-144; Laws 1986, LB 811, § 62; Laws 2005, LB 13, § 6.

48-144.01 Injuries; reports; time within which to file; terms, defined.

(1) In every case of reportable injury arising out of and in the course of employment, the employer or workers' compensation insurer shall file a report thereof with the Nebraska Workers' Compensation Court. Such report shall be filed within ten days after the employer or insurer has been given notice of or has knowledge of the injury.

(2) For purposes of this section:

(a) Reportable injury means an injury or diagnosed occupational disease which results in: (i) Death, regardless of the time between the death and the injury or onset of disease; (ii) time away from work; (iii) restricted work or termination of employment; (iv) loss of consciousness; or (v) medical treatment other than first aid;

(b) Restricted work means the inability of the employee to perform one or more of the duties of his or her normal job assignment. Restricted work does not occur if the employee is able to perform all of the duties of his or her normal job assignment, but a work restriction is assigned because the employee is experiencing minor musculoskeletal discomfort and for the purpose of preventing a more serious condition from developing;

(c) Medical treatment means treatment administered by a physician or other licensed health care professional; and

(d) First aid means:

(i) Using a nonprescription medication at nonprescription strength. For medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is not first aid;

(ii) Administering tetanus immunizations. Administering other immunizations, such as hepatitis B vaccine and rabies vaccine, is not first aid;

(iii) Cleaning, flushing, or soaking wounds on the surface of the skin;

(iv) Using wound coverings, such as bandages and gauze pads, and superficial wound closing devices, such as butterfly bandages and steri-strips. Using other wound closing devices, such as sutures and staples, is not first aid;

(v) Using hot or cold therapy;

(vi) Using any nonrigid means of support, such as elastic bandages, wraps, and nonrigid back belts. Using devices with rigid stays or other systems designed to immobilize parts of the body is not first aid;

(vii) Using temporary immobilization devices, such as splints, slings, neck collars, and back boards, while transporting accident victims;

(viii) Drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister;

(ix) Using eye patches;

(x) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(xi) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;

(xii) Using finger guards;

(xiii) Using massages. Using physical therapy or chiropractic treatment is not first aid; and

(xiv) Drinking fluids for relief of heat stress.

Source: Laws 1971, LB 572, § 11; Laws 1972, LB 1221, § 1; Laws 1986, LB 811, § 63; Laws 2005, LB 238, § 7.

48-144.03 Workers' compensation insurance policy; notice of cancellation or nonrenewal; effective date.

(1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Notwithstanding other provisions of this section, if the employer has secured workers' compensation insurance coverage with another workers' compensation insurer, then the cancellation or nonrenewal shall be effective as of the effective date of such other insurance coverage.

(5) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy.

(6) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt by the compensation court.

Source: Laws 1971, LB 572, § 13; Laws 1972, LB 1269, § 1; Laws 1986, LB 811, § 65; Laws 1994, LB 978, § 49; Laws 1994, LB 1222, § 61; Laws 1996, LB 1230, § 1; Laws 2005, LB 13, § 7; Laws 2005, LB 238, § 8; Laws 2007, LB117, § 33.

48-144.04 Reports; penalties for not filing; statutes of limitations not to run until report furnished.

Any employer, workers' compensation insurer, or risk management pool who fails, neglects, or refuses to file any report required of him or her by the Nebraska Workers' Compensation Court shall be guilty of a Class II misdemeanor for each such failure, neglect, or refusal. It shall be the duty of the Attorney General to act as attorney for the state. In addition to the penalty, where an employer, workers' compensation insurer, or risk management pool has been given notice, or the employer, workers' compensation insurer, or risk management pool has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file a report thereof, the limitations in section 48-137 and for injuries occurring before December 1, 1997, the limitations in section 48-128 shall not begin to run against the claim of the injured employee or his or her dependents entitled to compensation or against the State of Nebraska on behalf of the Workers' Compensation Trust Fund, or in favor of either the employer, workers' compensation insurer, or risk management pool until such report shall have been furnished as required by the compensation court.

Source: Laws 1971, LB 572, § 14; Laws 1977, LB 40, § 271; Laws 1986, LB 811, § 66; Laws 1987, LB 398, § 43; Laws 1997, LB 854, § 3; Laws 2000, LB 1221, § 7; Laws 2005, LB 238, § 9.

Cross References

Risk management pool, defined, see section 44-4303.

48-145 Employers; compensation insurance required; exceptions; effect of failure to comply; self-insurer; payments required; deposit with State Treasurer; credited to General Fund.

To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106, except the State of Nebraska and any governmental agency created by the state, shall either (a) insure and keep insured its liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state, (b) in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02, (c) be a member of a risk management pool authorized and providing group self-insurance of workers' compensation liability pursuant to the Intergovernmental Risk Management Act, or (d) with

approval of the Nebraska Workers' Compensation Court, self-insure its workers' compensation liability.

An employer seeking approval to self-insure shall make application to the compensation court in the form and manner as the compensation court may prescribe, meet such minimum standards as the compensation court shall adopt and promulgate by rule and regulation, and furnish to the compensation court satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. Approval is valid for the period prescribed by the compensation court unless earlier revoked pursuant to this subdivision or subsection (1) of section 48-146.02. The compensation court may by rule and regulation require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under subdivision (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document.

Notwithstanding any other provision of the Nebraska Workers' Compensation Act, a three-judge panel of the compensation court may, after notice and hearing, revoke approval as a self-insurer if it finds that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not revoke approval as a self-insurer pursuant to this subdivision. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the financial condition of the self-insurer or the failure of the self-insurer to comply with an obligation under the act poses a serious threat to the public health, safety, or welfare. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel. Appeal from a revocation pursuant to this subdivision shall be in accordance with section 48-185. No such appeal shall operate as a supersedeas unless the self-insurer executes to the compensation court a bond with one or more sureties authorized to do business within the State of Nebraska in an amount determined by the three-judge panel to be sufficient to satisfy the obligations of the self-insurer under the act;

(2) An approved self-insurer shall furnish to the State Treasurer an annual amount equal to two and one-half percent of the prospective loss costs for like employment but in no event less than twenty-five dollars. Prospective loss costs is defined in section 48-151. The compensation court is the sole judge as to the

prospective loss costs that shall be used. All money which a self-insurer is required to pay to the State Treasurer, under this subdivision, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The compensation court or designee of the compensation court may audit the payroll of a self-insurer at the compensation court's discretion. All money paid by a self-insurer under this subdivision shall be credited to the General Fund;

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents; and

(4) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to subdivision (1) of this section shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision (11) of section 48-115 and section 48-115.02 as generally provided in the act.

Source: Laws 1913, c. 198, § 46, p. 599; R.S.1913, § 3687; Laws 1917, c. 85, § 21, p. 215; Laws 1921, c. 122, § 1, p. 528; C.S.1922, § 3069; C.S.1929, § 48-146; Laws 1935, c. 57, § 31, p. 202; C.S.Supp.,1941, § 48-146; R.S.1943, § 48-145; Laws 1957, c. 205, § 1, p. 723; Laws 1963, c. 286, § 1, p. 860; Laws 1971, LB 572, § 8; Laws 1986, LB 811, § 67; Laws 1988, LB 1146, § 1; Laws 1997, LB 474, § 4; Laws 1999, LB 216, § 9; Laws 2000, LB 1221, § 8; Laws 2005, LB 13, § 8; Laws 2005, LB 238, § 10.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.

48-145.01 Employers; compensation required; penalty for failure to comply; injunction; Attorney General; duties.

(1) Any employer required to secure the payment of compensation under the Nebraska Workers' Compensation Act who willfully fails to secure the payment of such compensation shall be guilty of a Class I misdemeanor. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be individually guilty of a Class I misdemeanor and shall be personally liable jointly and severally with such employer for any compensation which may accrue under the act in respect to any injury which may occur to any employee of such employer while it so fails to secure the payment of compensation as required by section 48-145.

(2) If an employer subject to the Nebraska Workers' Compensation Act fails to secure the payment of compensation as required by section 48-145, the employer may be enjoined from doing business in this state until the employer complies with subdivision (1) of section 48-145. If a temporary injunction is granted at the request of the State of Nebraska, no bond shall be required to make the injunction effective. The Nebraska Workers' Compensation Court or the district court may order an employer who willfully fails to secure the payment of compensation to pay a monetary penalty of not more than one thousand dollars for each violation. For purposes of this subsection, each day of

continued failure to secure the payment of compensation as required by section 48-145 constitutes a separate violation. If the employer is a corporation, limited liability company, or limited liability partnership, any officer, member, manager, partner, or employee who had authority to secure payment of compensation on behalf of the employer and willfully failed to do so shall be personally liable jointly and severally with the employer for such monetary penalty. All penalties collected pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) It shall be the duty of the Attorney General to act as attorney for the State of Nebraska for purposes of this section. The Attorney General may file a motion pursuant to section 48-162.03 for an order directing an employer to appear before a judge of the compensation court and show cause as to why a monetary penalty should not be assessed against the employer pursuant to subsection (2) of this section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the compensation court and present evidence of a violation or violations pursuant to subsection (2) of this section and the identity of the person who had authority to secure the payment of compensation. Appeal from an order of a judge of the compensation court pursuant to subsection (2) of this section shall be in accordance with section 48-179.

Source: Laws 1971, LB 572, § 18; Laws 1977, LB 40, § 272; Laws 1986, LB 811, § 68; Laws 1993, LB 121, § 283; Laws 1999, LB 331, § 1; Laws 2005, LB 13, § 9.

48-145.02 Employers; reports required.

Every employer shall upon request of the administrator of the Nebraska Workers' Compensation Court report to the administrator (1) the number of its employees and the nature and location of their work, (2) the name of the workers' compensation insurer with whom the employer has insured its liability under the Nebraska Workers' Compensation Act and the number and date of expiration of such policy, and (3) the employer's federal employer identification number or numbers. Failure to furnish such report within ten days from the making of a request by certified or registered mail shall constitute presumptive evidence that the delinquent employer is violating section 48-145.01.

Source: Laws 1971, LB 572, § 19; Laws 1972, LB 1061, § 1; Laws 1986, LB 811, § 69; Laws 2005, LB 13, § 10.

48-145.04 Self-insurance; assessment; payments.

(1) The administrator of the Nebraska Workers' Compensation Court shall, prior to January 1 of each year, estimate as closely as possible the actual cost to the court of evaluating an application for self-insurance and supervising and administering the self-insurance program for the ensuing year and assess the amount thereof, but not to exceed two thousand dollars, against each applicant for self-insurance in this state. Such assessment shall be in addition to the payments required by subdivision (2) of section 48-145 and section 48-1,114. The administrator shall notify each applicant of the amount of the individual assessment. Such assessment shall be due and payable with the application for self-insurance. If any assessment is not paid, the application shall not be considered.

(2) All payments received under subsection (1) of this section shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund. Such payments shall be expended solely for evaluating applications for self-insurance and to aid in supervising and administering the self-insurance program. After the first year, the balance remaining of such payments at the time each annual assessment is made shall be taken into account when the total assessment for the ensuing year is made.

Source: Laws 1986, LB 1036, § 1; Laws 1992, LB 1006, § 93; Laws 1993, LB 757, § 13; Laws 1999, LB 2, § 1; Laws 2000, LB 1221, § 9; Laws 2005, LB 13, § 11.

48-146 Compensation insurance; provisions required; approval by Department of Insurance; effect of bankruptcy.

No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the workers' compensation insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the workers' compensation insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Each workers' compensation insurance policy and each agreement forming a risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into a workers' compensation insurance policy unless copies of such forms have been filed with and approved by the Department of Insurance. Each workers' compensation insurance policy and each agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to the effect (1) that as between the employer and the workers' compensation insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (2) that jurisdiction of the insured for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (3) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. Each workers' compensation insurance policy and each agreement providing such group self-insurance coverage shall include within its terms the payment of compensation to all employees who are within the scope and purview of the Nebraska Workers' Compensation Act.

Source: Laws 1913, c. 198, § 47, p. 599; R.S.1913, § 3688; Laws 1917, c. 85, § 22, p. 215; C.S.1922, § 3070; C.S.1929, § 48-147; Laws 1933, c. 91, § 1, p. 364; Laws 1935, c. 57, § 32, p. 203; C.S.Supp.,1941, § 48-147; R.S.1943, § 48-146; Laws 1949, c. 162, § 1, p. 415; Laws 1967, c. 291, § 2, p. 795; Laws 1971, LB 572,

§ 9; Laws 1986, LB 811, § 71; Laws 1987, LB 398, § 44; Laws 1988, LB 1146, § 2; Laws 1997, LB 474, § 5; Laws 1999, LB 216, § 10; Laws 2005, LB 238, § 11.

Cross References

Construction of section, see section 48-115.01.
Risk management pool, defined, see section 44-4303.

48-146.01 Transferred to section 44-3,158.

48-146.02 Insurance provider; risk management pool; suspension or revocation of authority to provide compensation insurance; Attorney General; duties; grounds.

(1)(a) If a three-judge panel of the Nebraska Workers' Compensation Court finds, after due notice and hearing at which the workers' compensation insurer is entitled to be heard and present evidence, that such insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may request the Director of Insurance to suspend or revoke the authorization of such insurer to write workers' compensation insurance under the provisions of Chapter 44 and such act. Such suspension or revocation shall not affect the liability of any such insurer under policies in force prior to the suspension or revocation.

(b) If a three-judge panel of the compensation court finds, after due notice and hearing at which the risk management pool is entitled to be heard and present evidence, that such pool has failed to comply with an obligation under the Nebraska Workers' Compensation Act, as set out in subsection (1) of section 44-4319, with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may suspend or revoke the authority of the pool to provide group self-insurance coverage of workers' compensation liability pursuant to the Intergovernmental Risk Management Act. Such suspension or revocation shall not affect the liability of any such risk management pool under the terms of the agreement forming the pool in force prior to the suspension or revocation.

(c) If a three-judge panel of the compensation court finds, after due notice and hearing at which the self-insurer is entitled to be heard and present evidence, that such self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct, the three-judge panel may revoke the approval of such self-insurer to provide self-insurance coverage of workers' compensation liability pursuant to section 48-145. Such revocation shall not affect the liability of any such self-insurer under an approval by the compensation court to self-insure in force prior to the revocation.

(d) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 for an order directing a workers' compensation insurer, risk management pool, or self-insurer to appear before a three-judge panel of the compensation court and show cause as to why the panel should not take action pursuant to this subsection. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may appear before the three-judge panel and present evidence that the workers' compensation insurer, risk management

pool, or self-insurer has failed to comply with an obligation under the Nebraska Workers' Compensation Act with such frequency as to indicate a general business practice to engage in that type of conduct. The presiding judge shall rule on a motion of the Attorney General pursuant to this subdivision and, if applicable, shall appoint judges of the compensation court to serve on the three-judge panel. The presiding judge shall not serve on such panel.

(e) Appeal from an action by a three-judge panel of the compensation court pursuant to subdivision (1)(b) or (1)(c) of this section shall be in accordance with section 48-185.

(2) In addition to any other obligations under the Nebraska Workers' Compensation Act, the following acts or practices, when committed with such frequency as to indicate a general business practice to engage in that type of conduct, shall subject the workers' compensation insurer, risk management pool, or self-insurer to action pursuant to subsection (1) of this section:

(a) Knowingly misrepresenting relevant facts or the provisions of the act or any rule or regulation adopted pursuant to such act;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under the act;

(c) Failing to promptly investigate claims arising under the act;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable payment of benefits when compensability has become reasonably clear;

(e) Refusing to pay benefits without conducting a reasonable investigation;

(f) Failing to affirm or deny compensability of a claim within a reasonable time after having completed the investigation related to such claim;

(g) Paying substantially less than amounts owed under the act where there is no reasonable controversy;

(h) Making payment to an injured employee, beneficiary of a deceased employee, or provider of medical, surgical, or hospital services without providing a reasonable and accurate explanation of the basis for the payment;

(i) Unreasonably delaying the investigation or payment of benefits by knowingly requiring excessive verification or duplication of information;

(j) Failing, in the case of the denial of compensability or the denial, change in, or termination of benefits, to promptly provide a reasonable and accurate explanation of the basis for such action to the injured employee or beneficiary of a deceased employee;

(k) Failing, in the case of the denial of payment for medical, surgical, or hospital services, to promptly provide a reasonable and accurate explanation of the basis for such action to the provider of such services; or

(l) Failing to provide the compensation court's address and telephone number to an injured employee or beneficiary of a deceased employee with instructions to contact the court for further information:

(i) At or near the time the workers' compensation insurer, risk management pool, or self-insurer receives notice or has knowledge of the injury; and

(ii) At or near the time of the denial of compensability or the denial, change in, or termination of benefits.

(3) In order to determine compliance with obligations under the Nebraska Workers' Compensation Act, the compensation court or its designee may

examine the workers' compensation records of (a) a workers' compensation insurer, a risk management pool, or a self-insurer or (b) an adjuster, a third-party administrator, or other agent acting on behalf of such workers' compensation insurer, risk management pool, or self-insurer. The authority of the compensation court pursuant to this subsection is subject to the limitations provided under the work-product doctrine and attorney-client privilege as recognized in Nebraska law.

(4) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1971, LB 572, § 16; Laws 1986, LB 811, § 73; Laws 1987, LB 398, § 45; Laws 1999, LB 331, § 2; Laws 2005, LB 13, § 12.

Cross References

Intergovernmental Risk Management Act, see section 44-4301.
Risk management pool, defined, see section 44-4303.

48-146.03 Workers' compensation insurance policy; deductible options; exception; liability; insurer; duties; prohibited acts; violation; penalty.

(1) Each workers' compensation insurance policy issued by an insurer pursuant to the Nebraska Workers' Compensation Act:

(a) Shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of five hundred dollars to two thousand five hundred dollars per claim in increments of five hundred dollars; or

(b) May offer, at the option of the insured employer and the workers' compensation insurer, a deductible for all amounts paid by the insurer as long as the deductible is not more than forty percent of the insured employer's otherwise applicable annual workers' compensation insurance premium at rates approved for the insurer but not less than fifty thousand dollars.

The insured employer, if choosing to exercise one of such options listed in this subsection, may choose only one of the amounts as the deductible. The provisions of this section shall be fully disclosed to each prospective purchaser in writing.

(2) The deductible form shall provide that the workers' compensation insurer shall remain liable for and shall pay the entire cost of medical benefits for each claim directly to the medical provider, shall remain liable for and pay the entire cost of benefits, claims, and expenses as required by the policy irrespective of the deductible provision, and shall then be reimbursed by the employer for any deductible amounts paid by the workers' compensation insurer. The employer shall be liable for reimbursement up to the limit of the deductible.

(3) A workers' compensation insurer shall not be required to offer a deductible if, as a result of a credit investigation, the insurer determines that the employer does not have the financial ability to be responsible for the payment of deductible amounts.

(4) A workers' compensation insurer shall service and, if necessary, defend all claims that arise during the policy period, including those claims payable in whole or in part from the deductible amount, and shall make such reports to the compensation court of payments made, including payments made under the deductible provisions, as may be required by the compensation court.

(5) A person who is employed by a policyholder which chooses to exercise the option of a deductible policy shall not be required to pay any of the deductible

amount, and any such policyholder shall not require or attempt to require the employee to give up his or her right of selection of physician set out in section 48-120. Any violation of this subsection shall be a Class II misdemeanor.

Source: Laws 1990, LB 313, § 2; Laws 1992, LB 1006, § 94; Laws 2005, LB 238, § 12.

PART IV—NEBRASKA WORKERS' COMPENSATION COURT

48-152 Nebraska Workers' Compensation Court; creation; jurisdiction; judges; selected or retained in office.

Recognizing that (1) industrial relations between employers and employees within the State of Nebraska are affected with a vital public interest, (2) an impartial and efficient administration of the Nebraska Workers' Compensation Act is essential to the prosperity and well-being of the state, and (3) suitable laws should be enacted for the establishing and for the preservation of such an administration of the Nebraska Workers' Compensation Act, there is hereby created, pursuant to the provisions of Article V, section 1, of the Nebraska Constitution, a court, consisting of seven judges, to be selected or retained in office in accordance with the provisions of Article V, section 21, of the Nebraska Constitution and to be known as the Nebraska Workers' Compensation Court, which court shall have authority to administer and enforce all of the provisions of the Nebraska Workers' Compensation Act, and any amendments thereof, except such as are committed to the courts of appellate jurisdiction or as otherwise provided by law.

Source: Laws 1935, c. 57, § 1, p. 188; C.S.Supp.,1941, § 48-162; R.S. 1943, § 48-152; Laws 1949, c. 161, § 3, p. 412; Laws 1965, c. 280, § 1, p. 806; Laws 1967, c. 292, § 1, p. 797; Laws 1975, LB 187, § 9; Laws 1983, LB 18, § 2; Laws 1986, LB 811, § 79; Laws 1988, LB 868, § 1; Laws 2005, LB 13, § 13.

48-155 Presiding judge; how chosen; term; powers and duties; acting presiding judge; selection; powers.

The judges of the Nebraska Workers' Compensation Court shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding judge for the next two years, subject to approval of the Supreme Court. The presiding judge may designate one of the other judges to act as presiding judge in his or her stead whenever necessary during the disqualification, disability, or absence of the presiding judge. The presiding judge shall rule on all matters submitted to the compensation court except those arising in the course of original or review hearings or as otherwise provided by law, assign or direct the assignment of the work of the compensation court to the several judges, clerk, and employees who support the judicial proceedings of the compensation court, preside at such meetings of the judges of the compensation court as may be necessary, and perform such other supervisory duties as the needs of the compensation court may require. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge.

Source: Laws 1935, c. 57, § 4, p. 189; C.S.Supp.,1941, § 48-165; R.S. 1943, § 48-155; Laws 1945, c. 113, § 2, p. 364; Laws 1959, c.

225, § 1, p. 791; Laws 1969, c. 396, § 1, p. 1386; Laws 1986, LB 811, § 84; Laws 1992, LB 360, § 15; Laws 2000, LB 1221, § 10; Laws 2005, LB 13, § 14.

48-155.01 Judges; appointment of acting judge; compensation.

(1) The Governor may, by single order, appoint a qualified person meeting the eligibility requirements of section 48-153.01 to serve as acting judge of the Nebraska Workers' Compensation Court. Such appointment shall be for a period of two years. In determining whether a person is qualified to serve as acting judge of the compensation court, the Governor shall consider the person's knowledge of the law, experience in the legal system, intellect, capacity for fairness, probity, temperament, and industry. The acting judge shall be subject to call by the presiding judge of the compensation court, who may assign the acting judge to temporary duty in order to (a) sit in the compensation court to relieve a congested docket of the court or to prevent the docket from becoming congested or (b) sit for a judge of the court who may be incapacitated or absent for any reason. An acting judge appointed and assigned pursuant to this section shall possess the same powers and be subject to the duties, restrictions, and liabilities as are prescribed by law respecting judges of the compensation court, except that an acting judge is not prohibited from practicing law as provided in section 7-111.

(2) The acting judge shall receive for each day of temporary duty an amount equal to one-twentieth of the monthly salary he or she would receive if he or she were a regularly appointed judge of the compensation court and shall be reimbursed for his or her expenses while on temporary duty at the same rate as provided in sections 81-1174 to 81-1177. Within fifteen days following completion of a temporary duty assignment, the acting judge shall submit to the presiding judge of the compensation court a request for payment or reimbursement for services rendered and expenses incurred during such temporary duty assignment. Upon receipt of such request, the presiding judge shall endorse on the request that the services were performed and expenses incurred pursuant to an assignment of the presiding judge of the compensation court and file such request with the proper authority for payment.

(3) The acting judge shall not pay into the Nebraska Retirement Fund for Judges nor be eligible for retirement benefits under the Judges Retirement Act.

Source: Laws 1959, c. 226, § 1, p. 792; Laws 1981, LB 204, § 79; Laws 1986, LB 811, § 85; Laws 1994, LB 833, § 27; Laws 2004, LB 1097, § 22; Laws 2005, LB 238, § 13.

Cross References

Judges Retirement Act, see section 24-701.01.

48-157 Clerk; administrator; appointment; duties.

(1) The presiding judge of the Nebraska Workers' Compensation Court shall appoint a clerk of the compensation court and such employees as the compensation court deems necessary to support the judicial proceedings of the compensation court, subject to approval of the compensation court. The clerk and employees supporting the judicial proceedings of the compensation court shall serve at the pleasure of the compensation court and shall perform such duties pertaining to the affairs of the court as the compensation court may prescribe or as otherwise provided by law.

(2) The presiding judge shall, subject to approval of the compensation court, appoint an administrator of the compensation court, who shall be the chief administrative officer of the compensation court. The administrator shall serve at the pleasure of the compensation court and shall perform such duties pertaining to affairs of the compensation court as the presiding judge may prescribe or as otherwise provided by law. The administrator shall appoint such other employees as the administrator deems necessary to carry out the duties of the administrator, subject to approval of the presiding judge. Employees appointed by the administrator shall serve at the pleasure of the administrator and shall perform such duties as the administrator may prescribe.

(3) The clerk shall, under the direction of the presiding judge, keep a full and true record of the judicial proceedings of the compensation court, record all pleadings and other documents filed with the compensation court, and issue all necessary notices and writs. No action shall be taken on any pleading or other document filed with the compensation court until the same has been recorded by the clerk. At the time a petition or motion is filed the clerk shall, on a rotating basis, assign one of the judges of the compensation court to hear the cause.

(4) The clerk may, under the direction of the presiding judge, make or cause to be made preservation duplicates of any record relating to the judicial proceedings of the compensation court. The original record may be destroyed, but only with the approval of the State Records Administrator pursuant to the Records Management Act. The reproduction of the preservation duplicates shall be admissible as evidence in any court of record in the State of Nebraska and, when duly certified, shall be evidence of equal credibility with the original record.

(5) Notices of hearings, notices of continuances, and summonses may be destroyed without preparing preservation duplicates after a record of their issuance has been made in the docket book. A reproduction of the page of the docket book or of the preservation duplicate of the page of the docket book showing such record and, in the case of summonses, showing issuance or return of the summons, when duly certified, shall be evidence of equal credibility with the original notice or summons. Correspondence, exhibits, and other documents relating to the judicial proceedings of the compensation court which the clerk deems to be irrelevant, unimportant, or superfluous may be destroyed without preparing preservation duplicates.

Source: Laws 1935, c. 57, § 7, p. 190; C.S.Supp.,1941, § 48-168; R.S. 1943, § 48-157; Laws 1945, c. 238, § 20, p. 713; Laws 1945, c. 113, § 4, p. 365; Laws 1951, c. 311, § 2, p. 1066; Laws 1969, c. 388, § 4, p. 1363; Laws 1975, LB 194, § 1; Laws 1983, LB 263, § 1; Laws 1986, LB 811, § 87; Laws 1997, LB 128, § 3; Laws 2005, LB 13, § 15.

Cross References

Records Management Act, see section 84-1220.

48-158 Judges; administrator; clerk; bond or insurance; oath.

Each of the judges of the Nebraska Workers' Compensation Court, the administrator of the compensation court, and the clerk of the compensation court shall, before entering upon or discharging any of the duties of his or her office, be bonded or insured as required by section 11-201 and such judges,

administrator, and clerk shall, before entering upon the duties of their offices, take and subscribe the statutory oath of office.

Source: Laws 1935, c. 57, § 8, p. 191; C.S.Supp.,1941, § 48-169; R.S. 1943, § 48-158; Laws 1978, LB 653, § 9; Laws 1986, LB 811, § 88; Laws 2004, LB 884, § 20; Laws 2005, LB 13, § 16.

48-159 Nebraska Workers' Compensation Court; judges; employees; salary; expenses.

(1) As soon as the same may be legally paid under the Constitution of Nebraska, each judge of the Nebraska Workers' Compensation Court shall receive an annual salary of ninety-two and one-half percent of the salary set for the Chief Justice and judges of the Supreme Court, payable in the same manner as the salaries of other state officers are paid. The administrator, the clerk, and all other employees of the compensation court shall receive such salaries as the compensation court shall determine, but not to exceed the amount of the appropriation made by the Legislature for such purpose. Such salaries shall be payable in the same manner as the salaries of other state employees are paid. The administrator, clerk, and other employees of the compensation court shall not receive any other salary or pay for their services from any other source.

(2) In addition to the salaries as provided by subsection (1) of this section, the judges of the Nebraska Workers' Compensation Court and the administrator, clerk, and other employees of the compensation court shall be entitled, while traveling on the business of the compensation court, to be reimbursed by the state for their necessary traveling expenses, consisting of transportation, subsistence, lodging, and such other items of expense as are necessary, to be paid as provided in sections 81-1174 to 81-1177.

Source: Laws 1935, c. 57, § 9, p. 191; C.S.Supp.,1941, § 48-170; R.S. 1943, § 48-159; Laws 1945, c. 113, § 12, p. 368; Laws 1947, c. 174, § 3, p. 562; Laws 1951, c. 154, § 1, p. 624; Laws 1953, c. 164, § 1, p. 515; Laws 1957, c. 206, § 1, p. 725; Laws 1959, c. 227, § 1, p. 794; Laws 1963, c. 289, § 1, p. 866; Laws 1965, c. 281, § 1, p. 808; Laws 1967, c. 293, § 1, p. 799; Laws 1969, c. 397, § 1, p. 1387; Laws 1972, LB 1293, § 4; Laws 1974, LB 923, § 4; Laws 1976, LB 76, § 5; Laws 1978, LB 672, § 5; Laws 1979, LB 398, § 5; Laws 1981, LB 204, § 80; Laws 1981, LB 111, § 5; Laws 1986, LB 811, § 89; Laws 1997, LB 853, § 2; Laws 2005, LB 13, § 17.

48-162 Compensation court; duties; powers.

(1) The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, supervisor, or officer of any partnership, limited liability company, or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or

the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order.

(2) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, documents, payrolls, medical reports, X-rays, photographs, or plates or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before the compensation court or any judge thereof.

(3) The compensation court or any judge thereof may expedite the hearing of a disputed case when there is an emergency.

Source: Laws 1917, c. 85, § 27, p. 218; Laws 1921, c. 122, § 2, p. 530; C.S.1922, § 3076; C.S.1929, § 48-153; Laws 1935, c. 57, § 34, p. 204; C.S.Supp.,1941, § 48-153; R.S.1943, § 48-162; Laws 1983, LB 263, § 2; Laws 1983, LB 18, § 5; Laws 1986, LB 811, § 93; Laws 1987, LB 187, § 2; Laws 1993, LB 121, § 284; Laws 1993, LB 757, § 16; Laws 2005, LB 13, § 18.

48-162.01 Employees; rehabilitation services; directory of service providers, counselors, and specialists; vocational rehabilitation plan; priorities; Attorney General; duties; compensation court; powers; duties.

(1) One of the primary purposes of the Nebraska Workers' Compensation Act is restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in vocational rehabilitation. Salaries, other benefits, and administrative expenses incurred by the compensation court for purposes of vocational rehabilitation shall be paid from the Compensation Court Cash Fund.

(2) Vocational rehabilitation specialists employed by the court shall continuously study the problems of vocational rehabilitation and shall maintain a directory of individual service providers, counselors, and specialists which have been approved by the Nebraska Workers' Compensation Court. The compensation court may approve as qualified such individual service providers, counselors, and specialists as are capable of rendering competent vocational rehabilitation services to injured employees. No individual service provider, counselor, or specialist shall be considered qualified to provide vocational rehabilitation services to injured employees unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she is entitled to such vocational rehabilitation services, including job placement and training, as may be reasonably necessary to restore him or her to suitable employment. Vocational rehabilitation training costs shall be paid from the Workers' Compensation Trust Fund. When vocational rehabilitation training requires residence at or near a facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Workers' Compensation Trust Fund.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of

vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and a vocational rehabilitation specialist of the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by a vocational rehabilitation specialist or judge of the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation plan. Any such plan shall be evaluated by a vocational rehabilitation specialist of the compensation court and approved by such specialist or a judge of the compensation court prior to implementation. In evaluating a plan the specialist shall make an independent determination as to whether the proposed plan is likely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. It is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her workers' compensation insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a vocational rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the vocational rehabilitation counselor and a vocational rehabilitation specialist or judge of the compensation court to be unlikely to result in suitable employment for the injured employee that is consistent with the priorities listed in this subsection. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer;

(c) A new job with the same employer;

(d) A job with a new employer; or

(e) A period of formal training which is designed to lead to employment in another career field.

(4) The compensation court may cooperate on a reciprocal basis with federal and state agencies for vocational rehabilitation services or with any public or private agency.

(5) The Attorney General, when requested by the administrator of the compensation court, may file a motion pursuant to section 48-162.03 regarding any issue related to vocational rehabilitation services or costs pursuant to this

section. The Attorney General shall be considered a party for purposes of such motion. The Attorney General may initiate an original action before the compensation court or may intervene in a pending action and become a party to the litigation. Any such motion shall be heard by a judge of the compensation court other than the presiding judge.

(6) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act is entitled to prompt physical and medical rehabilitation services. If physical or medical rehabilitation services are not voluntarily offered and accepted, the compensation court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a facility, institution, physician, or other individual service provider capable of rendering competent physical or medical rehabilitation services for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her workers' compensation insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her workers' compensation insurer.

When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her workers' compensation insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability.

(7) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with a physical, medical, or vocational rehabilitation program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) or (6) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Source: Laws 1969, c. 388, § 1, p. 1357; Laws 1974, LB 808, § 2; Laws 1983, LB 266, § 1; Laws 1986, LB 811, § 94; Laws 1993, LB 757, § 17; Laws 1997, LB 128, § 4; Laws 1999, LB 216, § 14; Laws 2000, LB 1221, § 11; Laws 2004, LB 1091, § 3; Laws 2005, LB 13, § 19.

48-162.02 Workers' Compensation Trust Fund; created; use; contributions; Attorney General; Department of Administrative Services; duties.

(1) The Workers' Compensation Trust Fund is created. The fund shall be administered by the administrator of the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01. Payments from the fund shall be made in the same manner as for claims against the state. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: Every insurance company which is transacting business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in subsection (2) of this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under subsections (2) and (6) of this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The administrator of the compensation court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The

administrator may order payments from the fund for vocational rehabilitation services and costs pursuant to section 48-162.01 when (a) vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, (b) the employee is engaged in an approved vocational rehabilitation plan pursuant to section 48-162.01, and (c) the employer has agreed to pay weekly compensation benefits for temporary disability while the employee is engaged in such plan.

(9) The Attorney General shall represent the fund when requested by the administrator in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service shall be had upon the Attorney General.

(10) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America 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.

(11) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the administrator of the compensation court determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the administrator shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars.

(12) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

Source: Laws 1974, LB 808, § 3; Laws 1986, LB 811, § 95; Laws 1987, LB 398, § 46; Laws 1988, LB 1034, § 2; Laws 1992, LB 1006, § 95; Laws 1993, LB 757, § 18; Laws 2000, LB 1221, § 12; Laws 2004, LB 1091, § 4; Laws 2005, LB 13, § 20; Laws 2007, LB322, § 8.

Cross References

Administrative Procedure Act, see section 84-920.
Risk management pool, defined, see section 44-4303.

48-163 Compensation court; rules and regulations; procedures for adoption; powers and duties.

(1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act, except that rules and regulations relating to the compensation court's adjudicatory function shall become effective only upon approval of the Supreme Court.

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice.

(3) The administrator of the compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to such subscribers. The administrator shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.

Source: Laws 1935, c. 57, § 6, p. 190; C.S.Supp.,1941, § 48-167; R.S. 1943, § 48-163; Laws 1975, LB 187, § 11; Laws 1986, LB 811, § 96; Laws 1992, LB 360, § 17; Laws 1993, LB 757, § 24; Laws 1999, LB 216, § 15; Laws 2005, LB 13, § 21.

48-165 Blank forms; distribution; fees; telephone number.

(1) The administrator of the Nebraska Workers' Compensation Court shall prepare and make available to employees, employers, and workers' compensation insurers such blank forms as deemed proper and advisable.

(2) The administrator of the compensation court may establish a schedule of fees for services including, but not limited to, copying, reproducing documents from preservation duplicates, preparing forms and other material, responding to inquiries for information, and preparing publications. In establishing fees, the administrator may consider costs for time, material, and delivery.

(3) The administrator of the compensation court may maintain a toll-free telephone number and assign staff members of the compensation court to respond to inquiries from employees, employers, and others regarding the operation of the Nebraska Workers' Compensation Act and to provide information regarding the rights, benefits, and obligations of injured employees and their employers under the act.

Source: Laws 1917, c. 85, § 29, p. 221; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 206; C.S.Supp.,1941,

§ 48-157; R.S.1943, § 48-165; Laws 1949, c. 161, § 4, p. 412; Laws 1983, LB 263, § 3; Laws 1986, LB 811, § 98; Laws 2005, LB 13, § 22.

48-168 Compensation court; rules of evidence; procedure; informal dispute resolution and arbitration; procedure.

(1) The Nebraska Workers' Compensation Court shall not be bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Nebraska Workers' Compensation Act.

(2)(a) The Nebraska Workers' Compensation Court may establish procedures whereby a dispute may be submitted by the parties, by the provider of medical, surgical, or hospital services pursuant to section 48-120, or by the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173 if otherwise permitted. No settlement or agreement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement or agreement is in conformity with the Nebraska Workers' Compensation Act.

(b) Until January 1, 2008, the Nebraska Workers' Compensation Court shall establish procedures for informal dispute resolution and arbitration for a dispute regarding the fees owed for medical, surgical, or hospital services provided pursuant to section 48-120. If the provider of medical, surgical, or hospital services and the workers' compensation insurer, risk management pool, or self-insured employer are unable to reach an agreement on the fees to be paid for such services: (i) They may agree to submit the dispute to an attorney staff member of the compensation court for resolution of the dispute through the informal dispute resolution process and for arbitration, if the dispute is unresolved in the informal dispute resolution process; or (ii) the parties may agree to submit the dispute directly to arbitration. A decision by the attorney staff member for the court as the result of an arbitration proceeding shall be final and binding and not subject to appeal.

(c) Informal dispute resolution and arbitration proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution or arbitration proceedings, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A staff member or mediator shall not be subject to process requiring the disclosure of any matter discussed during informal dispute resolution or arbitration proceedings. Any information from the files, reports, notes of the staff member or mediator, or other materials or communications, oral or written, relating to an informal dispute resolution or arbitration proceeding obtained by a staff member or mediator is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. No staff member or mediator shall be held liable for civil damages for any statement or decision made in the process of dispute resolution or arbitration unless such person acted in a manner exhibiting willful or wanton misconduct.

(d) The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution and arbitration proceedings that are considered necessary to effectuate the purposes of this section.

Source: Laws 1917, c. 85, § 29, p. 220; C.S.1922, § 3080; C.S.1929, § 48-157; Laws 1935, c. 57, § 36, p. 205; C.S.Supp.,1941, § 48-157; R.S.1943, § 46-168; Laws 1986, LB 811, § 101; Laws 1993, LB 757, § 25; Laws 2006, LB 489, § 34.

48-177 Hearing; judge; place; dismissal; procedure.

At the time a petition or motion is filed, one of the judges of the Nebraska Workers' Compensation Court shall be assigned to hear the cause. It shall be heard in the county in which the accident occurred, except as otherwise provided in section 25-412.02 and except that, upon the written stipulation of the parties, filed with the compensation court at least fourteen days before the date of hearing, the cause may be heard in any other county in the state. An action may be dismissed by the plaintiff, if represented by legal counsel, without prejudice to a future action, before the final submission of the case to the compensation court. Upon a motion for dismissal duly filed by the plaintiff, showing that a dispute between the parties no longer exists, the compensation court may dismiss any such cause without a hearing thereon.

Source: Laws 1935, c. 57, §§ 13, 15, pp. 193, 195; C.S.Supp.,1941, §§ 48-174, 48-176; R.S.1943, § 48-177; Laws 1945, c. 113, § 8, p. 366; Laws 1949, c. 161, § 5, p. 413; Laws 1975, LB 97, § 8; Laws 1978, LB 649, § 8; Laws 1986, LB 811, § 109; Laws 1997, LB 128, § 6; Laws 2005, LB 13, § 29.

48-178 Hearing; judgment; when conclusive; record of proceedings; costs; payment.

The judge shall make such findings and orders, awards, or judgments as the Nebraska Workers' Compensation Court or judge is authorized by law to make. Such findings, orders, awards, and judgments shall be signed by the judge before whom such proceedings were had. When proceedings are had before a judge of the compensation court, his or her findings, orders, awards, and judgments shall be conclusive upon all parties at interest unless reversed or modified upon review or appeal as hereinafter provided. A shorthand record or tape recording shall be made of all testimony and evidence submitted in such proceedings. The compensation court or judge thereof, at the party's expense, may appoint a court reporter or may direct a party to furnish a court reporter to be present and report or, by adequate mechanical means, to record and, if necessary, transcribe proceedings of any hearing. The charges for attendance shall be paid initially to the reporter by the employer or, if insured, by the employer's workers' compensation insurer. The charges shall be taxed as costs and the party initially paying the expense shall be reimbursed by the party or parties taxed with the costs. The compensation court or judge thereof may award and tax such costs and apportion the same between the parties or may order the compensation court to pay such costs as in its discretion it may think right and equitable. If the expense is unpaid, the expense shall be paid by the party or parties taxed with the costs or may be paid by the compensation court. The reporter shall faithfully and accurately report or record the proceedings.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-178; Laws 1945, c. 113, § 9, p. 367; Laws 1986, LB 811, § 110; Laws 1992, LB 360, § 20; Laws 2005, LB 238, § 14.

48-178.01 Payment of compensation when claimant's right to compensation not in issue.

Whenever any petition is filed and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer, a workers' compensation insurer, or a risk management pool or between two or more employers, workers' compensation insurers, or risk management pools, the Nebraska Workers' Compensation Court may order payment of compensation to be made immediately by one or more of such employers, workers' compensation insurers, or risk management pools. When the issue is finally resolved, an employer, workers' compensation insurer, or risk management pool held not liable shall be reimbursed for any such payments by the employer, workers' compensation insurer, or risk management pool held liable.

Source: Laws 1971, LB 572, § 17; Laws 1986, LB 811, § 111; Laws 1987, LB 398, § 47; Laws 2005, LB 238, § 15.

Cross References

Risk management pool, defined, see section 44-4303.

48-179 Review procedure; where held; joint stipulation of dismissal.

Either party at interest who refuses to accept the final findings, order, award, or judgment of the Nebraska Workers' Compensation Court on the original hearing may, within fourteen days after the date thereof, file with the compensation court an application for review before the compensation court, plainly stating the errors on which such party relies for reversal or modification and a brief statement of the relief sought. Such application must be specific as to each finding of fact and conclusion of law urged as error and the reason therefor. General allegations shall not be accepted. The filing of an application for review shall vest in an appellee the right to cross appeal against any other party to the appeal. If appellee files a brief pursuant to rules of practice prescribed by the compensation court, the cross appeal need only be asserted in the appellee's brief. The party or parties appealing for review or cross appealing shall be bound by the allegations of error contained in the application or brief and will be deemed to have waived all others. The compensation court may, at its option, notice a plain error not assigned in an application for review or brief. No party may file a motion for new trial, a motion for reconsideration, or a petition for rehearing before the judge at the original hearing. A party filing an application for review shall at the same time file with the compensation court copies of such application for the other party or parties at interest. The compensation court shall then immediately serve upon such other party or parties by mail or otherwise, as elsewhere herein provided, a copy of such application for review, and shall proceed to hear the cause on the record of the original hearing. The review by the compensation court shall be held in Lancaster County, Nebraska, or in any other county in the state at the discretion of the compensation court. Within fourteen days after such review the compensation court shall make its findings, order, award, or judgment, determining the issues in such cause. Upon the joint stipulation of the parties to dismiss, the compensation court may dismiss such an application without a review. No new evidence may be introduced at such review hearing. The review panel may write an opinion, but need not do so, and may make its decision by a brief summary order. The compensation court may reverse or modify the findings, order, award, or judgment of the original hearing only on the grounds

that the judge was clearly wrong on the evidence or the decision was contrary to law. On review, the compensation court may affirm, modify, reverse, or remand the judgment on the original hearing.

Source: Laws 1935, c. 57, § 13, p. 193; C.S.Supp.,1941, § 48-174; R.S. 1943, § 48-179; Laws 1949, c. 161, § 6, p. 413; Laws 1971, LB 251, § 1; Laws 1972, LB 1491, § 1; Laws 1983, LB 18, § 7; Laws 1986, LB 811, § 112; Laws 1992, LB 360, § 21; Laws 2000, LB 1221, § 14; Laws 2005, LB 236, § 1.

48-188 Order, award, or judgment; filed with district court; filing fee; effect.

Any order, award, or judgment by the Nebraska Workers' Compensation Court, or any judge thereof, which is certified by the clerk of the compensation court or any order, award, or judgment made pursuant to the Nebraska Workers' Compensation Act by the Court of Appeals or Supreme Court which is certified by the Clerk of the Supreme Court may, as soon as the same becomes conclusive upon the parties at interest, be filed with the district court of any county or counties in the State of Nebraska upon the payment of a fee of two dollars to the clerk of the district court or courts where such order, award, or judgment is filed. Upon filing, such order, award, or judgment shall have the same force and effect as a judgment of such district court or courts and all proceedings in relation thereto shall thereafter be the same as though the order, award, or judgment had been rendered in a suit duly heard and determined by such district court or courts.

Source: Laws 1935, c. 57, § 16, p. 196; C.S.Supp.,1941, § 48-177; R.S. 1943, § 48-188; Laws 1951, c. 153, § 2, p. 623; Laws 1975, LB 187, § 16; Laws 1986, LB 811, § 118; Laws 1991, LB 732, § 113; Laws 2005, LB 13, § 30.

PART V—CLAIMS AGAINST THE STATE

48-1,102 Award or judgment; payment; procedure.

Any final, nonappealable award or judgment in favor of a claimant under sections 48-192 to 48-1,109 shall be certified by the Attorney General to the Risk Manager and to the Director of Administrative Services. The Director of Administrative Services shall promptly issue his or her warrant for payment of such award or judgment out of the Workers' Compensation Claims Revolving Fund, if sufficient money is available in such fund, except that no portion in excess of one hundred thousand dollars of any award or judgment shall be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. Notice of any portion of an award or judgment in excess of one hundred thousand dollars shall be delivered by the Risk Manager to the chairperson of the Business and Labor Committee of the Legislature at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable. Delivery of any warrant in satisfaction of an award or judgment shall be made only upon receipt of a written receipt by the claimant in a form provided by the Attorney General.

Source: Laws 1971, LB 390, § 11; Laws 1986, LB 811, § 129; Laws 1994, LB 1211, § 2; Laws 2005, LB 13, § 31.

PART VI—NAME OF ACT

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.

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.

Cross References

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

48-1,117 Compensation Court Cash Fund; accounting; abatement of contributions.

The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Compensation Court Cash Fund setting forth the balance in the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance in the fund on hand as of the last day of the preceding month.

At the close of business on June 30 of any year, if the balance in the fund is equal to or exceeds three times the sum expended and encumbered in the fiscal year then ending, the contributions to the fund pursuant to sections 48-1,113 and 48-1,114 shall abate for the calendar year next ensuing and only for that year and the compensation court shall notify all self-insurers and the Director of Insurance who shall notify all workers' compensation insurers and risk

management pools of such abatement and of the date when such contributions shall resume. No abatement shall ever extend beyond one year.

Source: Laws 1993, LB 757, § 23; Laws 2005, LB 238, § 16.

ARTICLE 2
GENERAL PROVISIONS

Section
48-225. Veterans preference; terms, defined.
48-227. Veterans preference; examinations.
48-229. Veterans preference; Commissioner of Labor; duties.
48-237. Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

48-225 Veterans preference; terms, defined.

As used in sections 48-225 to 48-231, unless the context otherwise requires:

(1) Veteran means any person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions);

(2) Full-time duty means duty during time of war or during a period recognized by the United States Department of Veterans Affairs as qualifying for veterans benefits administered by the department and that such duty from January 31, 1955, to February 28, 1961, exceeded one hundred eighty days unless lesser duty was the result of a service-connected or service-aggravated disability;

(3) Disabled veteran means an individual who has served on active duty in the armed forces of the United States, has been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) therefrom, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department; and

(4) Preference eligible means any veteran as defined in this section.

Source: Laws 1969, c. 751, § 1, p. 2826; Laws 1991, LB 2, § 6; Laws 2001, LB 368, § 1; Laws 2005, LB 54, § 7.

48-227 Veterans preference; examinations.

Veterans who obtain passing scores on all parts or phases of an examination shall have five percent added to their passing score if a claim for such preference is made on the application. An additional five percent shall be added to the passing score of any disabled veteran.

Source: Laws 1969, c. 751, § 3, p. 2827; Laws 1997, LB 5, § 2; Laws 2005, LB 54, § 8.

48-229 Veterans preference; Commissioner of Labor; duties.

It shall be the duty of the Commissioner of Labor to enforce the provisions of sections 48-225 to 48-231. The commissioner shall act on preference claims as follows:

(1) When the employing agency and the claimant are in disagreement or when there is doubt as to any preference claim, the commissioner shall adjudicate the claim based on information given in the claim, the documents supporting the claim, and information which may be received from the armed forces of the United States, the United States Department of Veterans Affairs, or the National Archives and Records Administration;

(2) The commissioner shall allow a tentative five-percent preference, pending receipt of additional information, to any person who claims either a five-percent or a ten-percent preference but who furnishes insufficient information to establish entitlement thereto at the time of examination; and

(3) The commissioner shall decide appeals from preference determinations made by any employing agency.

Source: Laws 1969, c. 751, § 5, p. 2827; Laws 1991, LB 2, § 7; Laws 2005, LB 54, § 9.

48-237 Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

(1) For purposes of this section:

(a) Employer means a person which employs any individual within this state as an employee;

(b) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (i) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (ii) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (iii) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(c) Person means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof;

(d) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm; and

(e) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(2) Except as otherwise provided in subsection (3) of this section, an employer shall not:

(a) Publicly post or publicly display in any manner more than the last four digits of an employee's social security number, including intentional communication of more than the last four digits of the social security number or

otherwise making more than the last four digits of the social security number available to the general public or to an employee's coworkers;

(b) Require an employee to transmit more than the last four digits of his or her social security number over the Internet unless the connection is secure or the information is encrypted;

(c) Require an employee to use more than the last four digits of his or her social security number to access an Internet web site unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site; or

(d) Require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, an employer shall be permitted to use more than the last four digits of an employee's social security number only for:

(i) Compliance with state or federal laws, rules, or regulations;

(ii) Internal administrative purposes, including provision of more than the last four digits of social security numbers to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing; and

(iii) Commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services.

(b) The following uses for internal administrative purposes described in subdivision (a)(ii) of this subsection shall not be permitted:

(i) As an identification number for occupational licensing;

(ii) As an identification number for drug-testing purposes except when required by state or federal law;

(iii) As an identification number for company meetings;

(iv) In files with unrestricted access within the company;

(v) In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or

(vi) For posting any type of company information.

(4) An employer who violates this section is guilty of a Class V misdemeanor.

(5) Evidence of a conviction under this section is admissible in evidence at a civil trial as evidence of the employer's negligence.

Source: Laws 2007, LB674, § 16.

ARTICLE 3

CHILD LABOR

Section

48-310 Children under sixteen; working hours; limit; posting of notice; fee; special permit; exceptions.

(1) No person under sixteen years of age shall be employed or permitted to work in any employment as defined in section 48-301 more than forty-eight

hours in any one week, nor more than eight hours in any one day, nor before the hour of 6 in the morning, nor after the hour of 8 in the evening if the child is under the age of fourteen, nor after the hour of 10 in the evening if such child is between the ages of fourteen and sixteen. The person issuing the work certificate may limit or extend the stated hour in individual cases by endorsement on the certificate, except a child shall only be permitted to work after the hour of 10 p.m. if there is no school scheduled for the following day and, if he or she is between fourteen and sixteen years of age, he or she has consented to such extension by signing his or her name on the endorsement extension, and his or her employer has obtained a special permit from the Department of Labor. The Department of Labor may issue a special permit to allow employment of such child beyond 10 p.m. upon being satisfied, after inspection of the working conditions, of the safety, healthfulness, and general welfare to the child of the business premises. The special permit may be issued for periods not to exceed ninety days and may be renewed only after reinspection. The fee for each permit or renewal shall be established by rule and regulation of the Commissioner of Labor, and all money so collected by the commissioner shall be remitted to the State Treasurer who shall credit the funds to the General Fund. Every employer shall post in a conspicuous place in every room where such children are employed a printed notice stating the hours required of them each day, the hours of commencing and stopping work, and the time allowed for meals. The printed form of such notice shall be furnished by the Department of Labor.

(2) Except as provided in subsections (3) and (4) of this section, no person under sixteen years of age shall be employed or permitted to work as a door-to-door solicitor.

(3) A person under sixteen years of age engaged in the delivery or distribution of newspapers or shopping news may be employed or permitted to work as a door-to-door solicitor of existing customers of such newspapers or shopping news.

(4) A person under sixteen years of age is permitted to work as a door-to-door solicitor if he or she is working on behalf of his or her own individual entrepreneurial endeavor.

Source: Laws 1907, c. 66, § 10, p. 266; R.S.1913, § 3584; Laws 1919, c. 190, tit. IV, art. III, § 10, p. 556; C.S.1922, § 7678; C.S.1929, § 48-310; R.S.1943, § 48-310; Laws 1963, c. 290, § 3, p. 869; Laws 1967, c. 296, § 6, p. 808; Laws 1969, c. 399, § 1, p. 1389; Laws 1995, LB 330, § 3; Laws 2005, LB 484, § 1.

ARTICLE 4

HEALTH AND SAFETY REGULATIONS

Section
48-418. Transferred to section 48-2512.01.
48-418.01. Repealed. Laws 2007, LB 265, § 38.
48-418.02. Repealed. Laws 2007, LB 265, § 38.
48-418.03. Repealed. Laws 2007, LB 265, § 38.
48-418.04. Repealed. Laws 2007, LB 265, § 38.
48-418.05. Repealed. Laws 2007, LB 265, § 38.
48-418.06. Repealed. Laws 2007, LB 265, § 38.
48-418.07. Repealed. Laws 2007, LB 265, § 38.
48-418.08. Repealed. Laws 2007, LB 265, § 38.

48-418 Transferred to section 48-2512.01.

48-418.01 Repealed. Laws 2007, LB 265, § 38.

48-418.02 Repealed. Laws 2007, LB 265, § 38.

48-418.03 Repealed. Laws 2007, LB 265, § 38.

48-418.04 Repealed. Laws 2007, LB 265, § 38.

48-418.05 Repealed. Laws 2007, LB 265, § 38.

48-418.06 Repealed. Laws 2007, LB 265, § 38.

48-418.07 Repealed. Laws 2007, LB 265, § 38.

48-418.08 Repealed. Laws 2007, LB 265, § 38.

48-418.09 Repealed. Laws 2007, LB 265, § 38.

48-418.10 Repealed. Laws 2007, LB 265, § 38.

48-418.11 Repealed. Laws 2007, LB 265, § 38.

48-418.12 Repealed. Laws 2007, LB 265, § 38.

48-418.14 Repealed. Laws 2007, LB 265, § 38.

48-446 Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability.

(1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

(a) The amount of premium paid by the employer for workers' compensation insurance;

(b) The experience modification produced by the experience rating system referenced in section 44-7524;

(c) Whether the employer is covered by workers' compensation insurance under section 44-3,158;

(d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 757, § 36; Laws 1994, LB 1066, § 37; Laws 2000, LB 1119, § 41; Laws 2001, LB 180, § 6; Laws 2007, LB117, § 34.

Cross References

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

ARTICLE 6
EMPLOYMENT SECURITY

48-601 Act, how cited.

Sections 48-601 to 48-671 shall be known and may be cited as the Employment Security Law.

Source: Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp.,1941, § 48-701; R.S.1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3.

48-602 Terms, defined.

For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the last four completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the commissioner may prescribe by rule and regulation that base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(8) Commissioner means the Commissioner of Labor;

(9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability,

except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33) Worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

Source: Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp.,1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S.1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB265, § 4; Laws 2007, LB296, § 216.

48-603.01 Indian tribes; applicability of Employment Security Law.

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on March 2, 2001, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on March 2, 2001, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (7) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on March 2, 2001;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the

employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

(8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

Source: Laws 2001, LB 192, § 2; Laws 2003, LB 199, § 1; Laws 2005, LB 739, § 4.

48-606 Commissioner; duties; powers; annual report; schedule of fees.

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Each member of the Legislature shall receive a copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

Source: Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c.

167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5.

48-612 Employers; records and reports required; privileged communications; violation; penalty.

(1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information thus obtained or obtained from any individual pursuant to the administration of such law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

Source: Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-612; Laws 1945, c. 115, § 2, p. 381; Laws 1977, LB 40, § 290; Laws 1985, LB 339, § 11; Laws 1993, LB 757, § 31; Laws 2001, LB 192, § 5; Laws 2007, LB265, § 6.

48-612.01 Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.

(1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To the extent necessary for the proper presentation of the contest of an unemployment benefit claim or tax appeal. Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of his, her, or its claim or appeal;

(b) The Nebraska Workers' Compensation Court may use the names, addresses, and identification numbers of employers for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeals records and decisions rendered under the Employment Security Law and designated as precedential determinations by the commissioner on the coverage of employers, employment, wages, and benefit eligibility, if all social

security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) Information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Information about an individual or employer shall only be disclosed to the respective individual or employer;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) Disclosures to a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB265, § 7.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-619 Unemployment Trust Fund; withdrawals.

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 prescribed by the Commissioner of Labor, except that subject to the limitations therein contained, money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may upon an appropriation duly made by the Legislature, be used for the administration of the Employment Security Law and shall for such purposes and to the extent required 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, not exceeding the amounts standing to this state's account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as aforesaid and 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. 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 either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods or, in the discretion of the commissioner, shall be 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. 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.

48-624 Benefits; weekly benefit amount; calculation.

(1) For any benefit year beginning on or after January 1, 2001, through December 31, 2005, an individual's weekly benefit amount shall be one-half his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(2) For any benefit year beginning on or after January 1, 2006, through December 31, 2007, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed two hundred eighty-eight dollars per week.

(3) For any benefit year beginning on or after January 1, 2008, through December 31, 2010, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed the lesser of one-half of the state average weekly wage as annually determined under section 48-121.02 or the previous year's maximum weekly benefit amount plus ten dollars per week.

(4) For any benefit year beginning on or after January 1, 2011, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(5) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-624; Laws 1945, c. 114, § 2, p. 371; Laws 1949, c. 163, § 1, p. 423; Laws 1951, c. 157, § 1, p. 630; Laws 1953, c. 168, § 1, p. 541; Laws 1955, c. 190, § 5, p. 542; Laws 1957, c. 209, § 1, p. 738; Laws 1959, c. 229, § 1, p. 802; Laws 1963, c. 291, § 1, p. 870; Laws 1965, c. 286, § 1, p. 819; Laws 1967, c. 299, § 1, p. 814; Laws 1969, c. 401, § 1, p. 1394; Laws 1971, LB 651, § 4; Laws 1972, LB 1391, § 1; Laws 1973, LB 333, § 1; Laws 1974, LB 775, § 1; Laws 1975, LB 475, § 1; Laws 1977, LB 337, § 1; Laws 1979, LB 183, § 1; Laws 1983, LB 524, § 1; Laws 1985, LB 216, § 1; Laws 1987, LB 446, § 1; Laws 1990, LB 315, § 1; Laws 1994, LB 286, § 2; Laws 1998, LB 225, § 1; Laws 2005, LB 739, § 5; Laws 2007, LB265, § 8.

48-625 Benefits; weekly payment; how computed.

(1) For benefit years beginning on or before September 30, 2006, each eligible individual who is unemployed in any week shall be paid with respect to

such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-half of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-half of such benefit amount but less than his or her full weekly benefit amount, he or she shall be paid an amount equal to one-half of such benefit amount. For any benefit year beginning on or after October 1, 2006, each individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

(2) Vacation leave pay including that received in a lump sum or upon separation from employment shall be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801, § 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8.

48-627 Benefits; eligibility conditions; availability for work; requirements.

An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) He or she has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules and regulations as the commissioner may prescribe, except that the commissioner may, by rule and regulation, waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations, with respect to which he or she finds that compliance with such requirements, would be oppressive, or would be inconsistent with the purposes

of the Employment Security Law, except that no such rule or regulation shall conflict with section 48-623;

(2) He or she has made a claim for benefits, in accordance with section 48-629;

(3) He or she is able to work and is available for work. No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she has not been notified of the vacation at the time of his or her hiring. Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work. An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section. An inmate in a penal or custodial institution shall be considered unavailable for work for purposes of this section;

(4) He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (b) if benefits have been paid with respect thereto, or (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627 and 48-628, except for the requirements of this subdivision and of subdivision (6) of section 48-628;

(5) For any benefit year beginning on or before December 31, 2005, he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than one thousand six hundred dollars, of which sum at least eight hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has insured work in at least four weeks. For any benefit year beginning on or after January 1, 2006, he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than two thousand five hundred dollars, of which sum at least eight hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year. Commencing January 1, 2007, and each January 1 thereafter, the amount which an individual is required to earn within his or her base period shall be adjusted annually. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period ending on the previous September 30. For the purposes of this subdivision, (a) wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer, by whom such wages were paid, has satisfied the conditions of section 48-603 or subsection (3) of section 48-661, with respect to becoming an employer, and (b) with respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work for benefit purposes with respect to any benefit year shall include wages paid for services as defined by subdivision (4)(a), (b),

(c), or (d) of section 48-604 to the extent that such services were not services in employment under subdivision (4)(a) of section 48-604 or section 48-661 immediately prior to September 2, 1977, even though the employer by whom such wages were paid had not satisfied the conditions of subdivision (8), (9), (10), or (11) of section 48-603 with respect to becoming an employer at the time such wages were paid except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; and

(6) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that: (a) The individual has completed such services; or (b) there is justifiable cause for the claimant's failure to participate in such services.

Source: Laws 1937, c. 108, § 4, p. 376; Laws 1939, c. 56, § 3, p. 235; Laws 1941, c. 94, § 3, p. 383; C.S.Supp.,1941, § 48-704; R.S. 1943, § 48-627; Laws 1945, c. 115, § 3, p. 382; Laws 1949, c. 163, § 10, p. 425; Laws 1953, c. 167, § 6, p. 531; Laws 1955, c. 190, § 6, p. 543; Laws 1957, c. 209, § 2, p. 739; Laws 1959, c. 230, § 1, p. 804; Laws 1961, c. 241, § 1, p. 717; Laws 1963, c. 291, § 3, p. 872; Laws 1963, c. 292, § 1, p. 875; Laws 1971, LB 651, § 5; Laws 1973, LB 372, § 1; Laws 1977, LB 509, § 4; Laws 1981, LB 470, § 2; Laws 1985, LB 339, § 21; Laws 1987, LB 469, § 1; Laws 1987, LB 446, § 2; Laws 1988, LB 1033, § 2; Laws 1995, LB 1, § 8; Laws 1995, LB 240, § 1; Laws 1998, LB 225, § 2; Laws 2005, LB 484, § 5; Laws 2005, LB 739, § 9.

48-628 Benefits; conditions disqualifying applicant; exceptions.

An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for the twelve weeks which immediately follow such week. A temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so; or

(b) For the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and for which he or she earns wages payable to him or her, if so found by the commissioner, and for not more than one week which immediately follows such week;

(2) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the twelve weeks which immediately follow such week. If the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was

unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct. In addition to the twelve-week benefit disqualification assessed under this subdivision, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer if the commissioner finds that the individual was discharged for misconduct in connection with the work which was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or being under the influence of any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery when the individual is so under the influence on the worksite or while engaged in work for the employer;

(3)(a) For any week of unemployment in which he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for the twelve weeks which immediately follow such week, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner.

(b) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to the individual's health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence.

(c) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding any other provisions in subdivision (3) of this section, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in subdivision (3) of this section relating to failure to apply for or a refusal to accept suitable work;

(4) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and (b) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute. If in any case, separate branches of work, which are commonly

conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(5) For any week with respect to which he or she is receiving or has received remuneration in the form of (a) wages in lieu of notice, or a dismissal or separation allowance, (b) compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States, (c) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or (d) a gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workers' compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributable. Military service-connected disability compensation payable under 38 U.S.C. chapter 11 and primary insurance benefits payable under Title II of the Social Security Act, as amended, or similar payments under any act of Congress shall not be deemed to be disqualifying or deductible from the benefit amount. No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant. No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (29)(g) of section 48-602;

(6) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(7) For any week of unemployment if such individual is a student. For the purpose of this subdivision, student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school, except that attendance for training purposes under a plan approved by the commissioner for such individual shall not be disqualifying;

(8) For any week of unemployment if benefits claimed are based on services performed:

(a) In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such

period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under subdivision (8)(b) of this section and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of subdivision (8)(b) of this section;

(c) In any capacity described in subdivision (8)(a) or (b) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section. As used in this subdivision, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section;

(9) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(10) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5). Any data or information required of individuals applying for benefits to determine whether benefits are

not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence;

(11) Notwithstanding any other provisions of the Employment Security Law, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application to any such week in training of provisions of the Employment Security Law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of such act;

(12) For any week during which the individual is on a leave of absence; and

(13) For any week of unemployment benefits or for waiting week credit if he or she has been disqualified from the receipt of benefits pursuant to section 48-663.01 two or more times in the five-year period immediately prior to filing his or her most recent claim. This subdivision shall not apply if the individual has repaid in full any overpayments established in conjunction with the disqualifications assessed under section 48-663.01 during that five-year period.

Source: Laws 1937, c. 108, § 5, p. 377; Laws 1939, c. 56, § 4, p. 236; C.S.Supp.,1941, § 48-705; R.S.1943, § 48-628; Laws 1945, c. 114, § 4, p. 372; Laws 1955, c. 190, § 7, p. 545; Laws 1961, c. 241, § 2, p. 718; Laws 1965, c. 287, § 1, p. 821; Laws 1967, c. 301, § 1, p. 818; Laws 1969, c. 402, § 1, p. 1395; Laws 1971, LB 651, § 6; Laws 1975, LB 370, § 1; Laws 1976, LB 819, § 1; Laws 1977, LB 509, § 5; Laws 1978, LB 128, § 1; Laws 1979, LB 581, § 3; Laws 1980, LB 800, § 4; Laws 1981, LB 470, § 3; Laws 1982, LB 801, § 2; Laws 1983, LB 248, § 4; Laws 1983, LB 432, § 1; Laws 1984, LB 746, § 2; Laws 1985, LB 339, § 22; Laws 1985, LB 341, § 1; Laws 1987, LB 276, § 1; Laws 1987, LB 469, § 2; Laws 1989, LB 605, § 1; Laws 1991, LB 498, § 1; Laws 1992, LB 878, § 1; Laws 1994, LB 286, § 3; Laws 1994, LB 913, § 1; Laws 1995, LB 1, § 9; Laws 1995, LB 77, § 2; Laws 1995, LB 291, § 1; Laws 1995, LB 759, § 1; Laws 1996, LB 633, § 1; Laws 1998, LB 225, § 3; Laws 2000, LB 953, § 7; Laws 2001, LB 192, § 8; Laws 2002, LB 921, § 2; Laws 2005, LB 484, § 6; Laws 2005, LB 739, § 10.

48-628.01 Good cause for voluntarily leaving employment, defined.

Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

(1) An individual has made all reasonable efforts to preserve the employment but voluntarily leaves his or her work for the necessary purpose of escaping

abuse at the place of employment or abuse as defined in section 42-903 between household members;

(2) An individual left his or her employment voluntarily due to a bona fide non-work-connected illness or injury that prevented him or her from continuing the employment or from continuing the employment without undue risk of harm to the individual;

(3) An individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station;

(4) An individual left his or her employment because his or her employer required the employee to relocate;

(5)(a) An individual is a construction worker and left his or her employment voluntarily for the purpose of accepting previously secured insured work in the construction industry if the commissioner finds that:

(i)(A) The quit occurred within thirty days immediately prior to the established termination date of the job which the individual voluntarily leaves, (B) the specific starting date of the new job is prior to the established termination date of the job which the worker quits, (C) the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit, and (D) the worker had worked at least twenty days or more at the new job after the established termination date of the previous job unless the new job was terminated by a contract cancellation; or

(ii)(A) The construction worksite of the job which the worker quit was more than fifty miles from his or her place of residence, (B) the new construction job was fifty or more miles closer to his or her residence than the job which he or she quit, and (C) the worker actually worked twenty days or more at the new job unless the new job was terminated by a contract cancellation.

(b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under subdivision (1) or (2) of section 48-628;

(6) An individual accepted a voluntary layoff to avoid bumping another worker;

(7) An individual left his or her employment as a result of being directed to perform an illegal act;

(8) An individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age;

(9) An individual left his or her employment because of unsafe working conditions; or

(10) Equity and good conscience demand a finding of good cause.

Source: Laws 2005, LB 739, § 7.

48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; food stamp benefits overissuance; disclosure required; collection.

(1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are

not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the Department of Health and Human Services determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in section 13(c)(1) of the federal Food Stamp Act of 1977, of food stamp benefits, if not otherwise known or disclosed to the state food stamp agency. The commissioner shall notify the state food stamp agency enforcing such obligation of any individual disclosing that he or she owes an uncollected overissuance whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance (i) the amount specified by the individual to the commissioner to be deducted and withheld under this subsection, (ii) the amount, if any, determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the federal Food Stamp Act of 1977, or (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such federal act.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state food stamp agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law

providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

Source: Laws 1937, c. 108, § 15, p. 400; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB296, § 217.

Cross References

Administrative Procedure Act, see section 84-920.

48-648 Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.

(1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. The commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7.

48-648.01 Employer; submit quarterly wage reports; when.

The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. The commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

Source: Laws 1985, LB 343, § 2; Laws 1986, LB 950, § 6; Laws 2005, LB 484, § 8.

48-648.02 Wages, defined.

As used in sections 48-648 and 48-649 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 (1) seven thousand dollars in calendar year 2005, (2) eight thousand dollars in calendar year 2006, and (3) nine thousand dollars in calendar year 2007 and each calendar year thereafter unless that part of the remuneration is subject to a tax under 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.

48-649 Combined tax rate; how computed.

The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year;

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year; or

(c) The state advisory council determines that a zero percent state unemployment insurance tax rate is in the best interests of preserving the integrity of the state's account in the Unemployment Trust Fund;

(2)(a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and (b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4)(a) Effective January 1, 2006, an employer's combined tax rate (i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4)(e), (4)(f), and (4)(g) of this section or two and five-tenths

percent and (ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4)(e) and (4)(f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) Contributions have been payable to the fund and credited to his or her experience account with respect to each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4)(a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industrial Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of subdivision (4)(a) of this section be less than one and twenty-five hundredths percent.

(c) For any employer who has not been subject to the payment of contributions during each of the two four-calendar-quarter periods ending on September 30 of any year, but has been subject to the payment of contributions in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, 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 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 are payable.

(e) 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

Category	Experience Factor
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 being assigned to accounts with the highest reserve ratios and category twenty being 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:

(i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category; and

(ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such 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 subdivision 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

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.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) 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.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) 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; and

(7)(a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. The commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the

payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB265, § 9.

48-649.01 Repealed. Laws 2007, LB 265, § 39.

48-652 Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.

(1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. 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 prescribe 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. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. 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 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, or (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01 and (ii) 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. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(b) of section 48-627. 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).

(b) 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 subdivision (5) of section 48-627.

(c) 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 by rules and regulations prescribe 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. Any benefit check 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 Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to 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 of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, 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 and 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 (ii) 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. The payment of benefits to an individual shall in no case 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 contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

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.
Effective date July 18, 2008.

48-654 Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.

Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and prior to September 6, 1985, shall, and on and after September 6, 1985, may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only on and after January 1, 1953, where an employer has transferred at any time subsequent to or on January 1, 1950, a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during any of the first three calendar quarters of a calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the last day of the calendar year in which acquisition occurs, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be December 31 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for the calendar year preceding the computation date.

Source: Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp.,1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339, § 38; Laws 2005, LB 484, § 10.

48-654.01 Employer's experience account; transferable; when; violation; penalty.

(1) For purposes of this section:

(a) Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibition involved;

(b) Person means an individual, a partnership, a limited liability company, a corporation, or any other legally recognized entity;

(c) Trade or business includes the employer's workforce; and

(d) Violates or attempts to violate includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of law, the following shall apply regarding assignment of combined tax rates and transfer of an employer's experience account:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the employer's experience account attributable to the transferred trade or business shall be transferred to the employer to whom such business is transferred. The rates of both employers shall be recalculated in accordance with section 48-654. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. If, following a transfer of experience under this subdivision, the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a lower combined tax rate, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account; or

(b) Whenever a person is not an employer at the time it acquires the trade or business of an employer, the employer's experience account of the acquired business shall not be transferred to such person if the commissioner finds that the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate. Instead, such person shall be assigned the new employer combined tax rate under section 48-649. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(3)(a) If a person knowingly violates or attempts to violate this section, or if a person knowingly advises another person in a way that results in a violation of this section and:

(i) The person is an employer, such employer shall be assigned the highest combined tax rate assignable under section 48-649 for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such rate year. However, if the person's business is already at the highest combined tax rate or if the amount of increase in the

combined tax rate would be less than two percent, then a penalty combined tax rate of two percent of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year; or

(ii) The person is not an employer, such person shall be subject to a civil penalty of not more than five thousand dollars.

(b) In addition to any civil penalties that may apply under this subsection, such person shall be guilty of a Class IV felony.

(4) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of evading combined tax liability.

Source: Laws 2005, LB 484, § 11.

48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability.

(1) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications. An appeal may be taken from any such determination in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subsection (1) of this section fails or refuses to repay such overpayment within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

Source: Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11.

48-664 Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.

Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to

disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment occurs, in whole or in part, as the result of a violation of this section by an employer, the amount of the overpayment recovered shall not be credited back to such employer's experience account.

Source: Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-664; Laws 1953, c. 167, § 13, p. 539; Laws 1977, LB 40, § 295; Laws 1985, LB 339, § 45; Laws 2005, LB 484, § 12; Laws 2007, LB265, § 12.

48-669 Claimant; benefit amounts; how computed.

(1) With respect to any claimant for whom there is current a benefit year, which has not expired prior to the effective date of any change in the weekly benefit amounts prescribed in section 48-624 or the maximum annual benefit amount prescribed in section 48-626, the weekly benefit amount and the maximum annual benefit amount shall be those amounts determined prior to the effective date of such change.

(2) After December 31, 1995, any changes in the weekly benefit amounts prescribed in section 48-624 or in the maximum annual benefit amount prescribed in section 48-626 shall become effective on January 1 of the year following such legislative enactment.

(3) After December 31, 2000, any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

Source: Laws 1949, c. 163, § 18, p. 435; Laws 1951, c. 157, § 2, p. 631; Laws 1953, c. 168, § 2, p. 542; Laws 1955, c. 190, § 11, p. 551; Laws 1957, c. 209, § 3, p. 741; Laws 1959, c. 229, § 3, p. 803; Laws 1961, c. 235, § 4, p. 698; Laws 1963, c. 291, § 4, p. 874; Laws 1965, c. 286, § 2, p. 820; Laws 1967, c. 299, § 2, p. 815; Laws 1969, c. 401, § 2, p. 1394; Laws 1971, LB 651, § 14; Laws 1972, LB 1391, § 2; Laws 1973, LB 333, § 2; Laws 1974, LB 775, § 2; Laws 1975, LB 475, § 2; Laws 1977, LB 337, § 2; Laws 1979, LB 183, § 2; Laws 1983, LB 524, § 2; Laws 1985, LB 216, § 2; Laws 1987, LB 446, § 3; Laws 1994, LB 286, § 4; Laws 1998, LB 225, § 4; Laws 2005, LB 739, § 13.

ARTICLE 7
BOILER INSPECTION

Section
48-720. Terms, defined.
48-722. State boiler inspector; annual inspection; exception; contract with authorized inspection agency; certification.
48-726. Boilers and vessels to which act does not apply.
48-730. Equipment; installation; notice to commissioner; reinspection.
48-731. Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.
48-736. Violation; penalty.

48-720 Terms, defined.

As used in the Boiler Inspection Act, unless the context otherwise requires:

(1) Authorized inspection agency means an authorized inspection agency as defined in NB-369, National Board Qualifications and Duties for Authorized Inspection Agencies (AIAs) Performing Inservice Inspection Activities and Qualifications for Inspectors of Boilers and Pressure Vessels;

(2) Board means the Boiler Safety Code Advisory Board;

(3) Boiler means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof, under pressure or vacuum, for internal or external use to itself, by the direct application of heat and an unfired pressure vessel in which the pressure is obtained from an external source or by the application of heat from an indirect or direct source. Boiler includes a fired unit for heating or vaporizing liquids other than water only when such unit is separate from processing systems and complete within itself;

(4) Commissioner means the Commissioner of Labor; and

(5) Department means the Department of Labor.

Source: Laws 1987, LB 462, § 2; Laws 1988, LB 863, § 2; Laws 1997, LB 641, § 1; Laws 2007, LB226, § 1.

48-722 State boiler inspector; annual inspection; exception; contract with authorized inspection agency; certification.

(1) Except as provided in subsection (3) of this section, the state boiler inspector shall inspect or cause to be inspected at least once every twelve months all boilers required to be inspected by the Boiler Inspection Act to determine whether the boilers are in a safe and satisfactory condition and properly constructed and maintained for the purpose for which the boiler is used, except that (a) hobby boilers, steam farm traction engines, portable and stationary show engines, and portable and stationary show boilers, which are not otherwise exempted from the act pursuant to section 48-726, shall be subject to inspection at least once every twenty-four months and (b) the commissioner may, by rule and regulation, establish inspection periods for pressure vessels of more than twelve months, but not to exceed the inspection period recommended in the National Board Inspection Code or the American Petroleum Institute Pressure Vessel Inspection Code API-510 for pressure vessels being used for similar purposes. In order to ensure that inspections are performed in a timely manner, the department may contract with an authorized

inspection agency to perform any inspection authorized under the Boiler Inspection Act. If the department contracts with an authorized inspection agency to perform inspections, such contract shall be in writing and shall contain an indemnification clause wherein the authorized inspection agency agrees to indemnify and defend the department for loss occasioned by negligent or tortious acts committed by special inspectors employed by such authorized inspection agency when performing inspections on behalf of the department.

(2) No boilers required to be inspected by the act shall be operated without valid and current certification pursuant to rules and regulations adopted and promulgated by the commissioner in accordance with the requirements of the Administrative Procedure Act. The owner of any boiler installed after September 2, 1973, shall file a manufacturer's data report covering the construction of such boiler with the state boiler inspector. Such reports shall be used to assist the state boiler inspector in the certification of boilers. No boiler required to be inspected by the Boiler Inspection Act shall be operated at any type of public gathering or show without first being inspected and certified as to its safety by the state boiler inspector or a special inspector commissioned pursuant to section 48-731. Antique engines with boilers may be brought into the state from other states without inspection, but inspection as provided in this section shall be made and the boiler certified as safe before being operated.

(3) The commissioner may, by rule and regulation, waive the inspection of unfired pressure vessels registered with the State of Nebraska if the commissioner finds that the owner or user of the unfired pressure vessel follows a safety inspection and repair program that is based upon nationally recognized standards.

Source: Laws 1943, c. 112, § 2(1), p. 392; R.S.1943, § 48-702; Laws 1961, c. 235, § 5, p. 698; Laws 1971, LB 886, § 1; Laws 1973, LB 481, § 1; R.S.1943, (1984), § 48-702; Laws 1987, LB 462, § 4; Laws 1995, LB 438, § 2; Laws 1997, LB 641, § 2; Laws 1998, LB 395, § 13; Laws 1999, LB 66, § 2; Laws 2007, LB226, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

48-726 Boilers and vessels to which act does not apply.

The Boiler Inspection Act shall not apply to:

(1) Boilers of railway locomotives subject to federal inspection;

(2) Boilers operated and regularly inspected by railway companies operating in interstate commerce;

(3) Boilers under the jurisdiction and subject to regular periodic inspection by the United States Government;

(4) Boilers used exclusively for agricultural purposes;

(5) Steam heating boilers in single-family residences and apartment houses with four or less units using a pressure of less than fifteen pounds per square inch and having a safety valve set at not higher than fifteen pounds pressure per square inch;

(6) Heating boilers using water in single-family residences and apartment houses with four or less units using a pressure of less than thirty pounds per square inch and having a safety valve set at not higher than thirty pounds pressure per square inch;

(7) Fire engine boilers brought into the state for temporary use in times of emergency;

(8) Boilers of a miniature model locomotive or boat or tractor or stationary engine constructed and maintained as a hobby and not for commercial use and having a diameter of less than ten inches inside diameter and a grate area not in excess of one and one-half square feet and that are properly equipped with a safety valve;

(9) Hot water supply boilers if none of the following limitations is exceeded: (a) Two hundred thousand British thermal units of input; (b) one hundred twenty gallons of nominal capacity; or (c) two hundred ten degrees Fahrenheit output;

(10) Unfired pressure vessels not exceeding (a) five cubic feet in volume or (b) a pressure of two hundred fifty pounds per square inch;

(11) Unfired pressure vessels owned and maintained by a district or corporation organized under the provisions of Chapter 70, article 6; and

(12) Unfired pressure vessels (a) not exceeding a maximum allowable working pressure of five hundred pounds per square inch, (b) that contain carbon dioxide, helium, oxygen, nitrogen, argon, hydrofluorocarbon refrigerant, or any other nonflammable gas determined by the commissioner not to be a risk to the public, (c) that are manufactured and repaired in accordance with applicable American Society of Mechanical Engineers standards, and (d) that are installed in accordance with the manufacturer's specifications.

Source: Laws 1943, c. 112, § 3, p. 393; R.S.1943, § 48-706; Laws 1965, c. 288, § 2, p. 825; Laws 1969, c. 406, § 1, p. 1404; R.S.1943, (1984), § 48-706; Laws 1987, LB 462, § 8; Laws 1995, LB 438, § 6; Laws 1997, LB 641, § 3; Laws 1998, LB 395, § 15; Laws 1999, LB 66, § 3; Laws 2005, LB 122, § 1.

48-730 Equipment; installation; notice to commissioner; reinspection.

Before any boiler required to be inspected by the Boiler Inspection Act is installed, a ten days' written notice of intention to install the boiler shall be given to the commissioner, except that the commissioner may, upon application and good cause shown, waive the ten-day prior notice requirement. The notice shall designate the proposed place of installation, the type and capacity of the boiler, the use to be made of the boiler, the name of the company which manufactured the boiler, and whether the boiler is new or used. A boiler moved from one location to another shall be reinspected prior to being placed back into use.

Source: Laws 1943, c. 112, § 5, p. 394; R.S.1943, (1984), § 48-710; Laws 1987, LB 462, § 12; Laws 1995, LB 438, § 9; Laws 1998, LB 395, § 16; Laws 2007, LB226, § 3.

48-731 Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.

(1)(a) The commissioner may issue a special inspector commission to an inspector in the employ of a company if the inspector has previously passed the examination prescribed by the National Board of Boiler and Pressure Vessel Inspectors and the company is an insurance company authorized to insure

boilers in this state against loss from explosion or is an authorized inspection agency.

(b) Each special inspector employed by an insurance company or authorized inspection agency who has been issued a special inspector commission under this section shall submit to the state boiler inspector complete data of each boiler required to be inspected by the Boiler Inspection Act which is insured or inspected by such insurance company or authorized inspection agency on forms approved by the commissioner.

(c) Insurance companies shall notify the department of new, canceled, or suspended risks relating to insured boilers. Insurance companies shall notify the department of all boilers which the company insures, or any boiler for which insurance has been canceled, not renewed, or suspended within thirty days after such action. Authorized inspection agencies shall notify the department of any new or canceled agreements relating to the inspection of boilers or pressure vessels within thirty days after such action.

(d) Insurance companies and authorized inspection agencies shall immediately notify the department of defective boilers. If a special inspector employed by an insurance company, upon the first inspection of new risk, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance, the company shall immediately submit a report of the defects to the state boiler inspector.

(2) The inspection required by the act shall not be required if (a) an annual inspection is made under a city ordinance which meets the standards set forth in the act, (b) a certificate of inspection of the boiler is filed with the commissioner with a certificate fee, and (c) the inspector for the city making such inspection is required by such ordinance to either hold a commission from the National Board of Boiler and Pressure Vessel Inspectors commensurate with the type of inspections performed by the inspector for the city or acquire the commission within twelve months after appointment.

(3) The commissioner may, by rule and regulation, provide for the issuance of a special inspector commission to an inspector in the employ of a company using or operating an unfired pressure vessel subject to the act for the limited purpose of inspecting unfired pressure vessels used or operated by such company.

(4) All inspections made by a special inspector shall be performed in accordance with the act, and a complete report of such inspection shall be filed with the department in the time, manner, and form prescribed by the commissioner.

(5) The state boiler inspector may, at his or her discretion, inspect any boiler to which a special inspector commission applies.

(6) The commissioner may, for cause, suspend or revoke any special inspector commission.

(7) No authorized inspection agency shall perform inspections of boilers in the State of Nebraska unless the authorized inspection agency has insurance coverage for professional errors and omissions and comprehensive and general liability under a policy or policies written by an insurance company authorized to do business in this state in effect at the time of such inspection. Such insurance policy or policies shall be in an amount not less than the minimum amount as established by the commissioner. Such minimum amount shall be established with due regard to the protection of the general public and the

availability of insurance coverage, but such minimum insurance coverage shall not be less than one million dollars for professional errors and omissions and one million dollars for comprehensive and general liability.

Source: Laws 1943, c. 112, § 6(2), p. 394; R.S.1943, § 48-712; Laws 1947, c. 176, § 1, p. 584; Laws 1980, LB 959, § 2; R.S.1943, (1984), § 48-712; Laws 1987, LB 462, § 13; Laws 1995, LB 438, § 10; Laws 1998, LB 395, § 17; Laws 2007, LB226, § 4.

48-736 Violation; penalty.

Any person, persons, corporations, and the directors, managers, superintendents, and officers of such corporations violating the Boiler Inspection Act shall be guilty of a Class III misdemeanor.

Source: Laws 1943, c. 112, § 9, p. 396; R.S.1943, § 48-716; Laws 1977, LB 40, § 297; R.S.1943, (1984), § 48-716; Laws 1987, LB 462, § 18; Laws 2007, LB226, § 5.

ARTICLE 8

COMMISSION OF INDUSTRIAL RELATIONS

Section

48-801 Terms, defined.

As used in the Industrial Relations Act, unless the context otherwise requires:

(1) Person shall include an individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation,

any public power district or public power and irrigation district, or any public utility;

(5) Employee shall include any person employed by any employer;

(6) Labor organization shall mean any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment;

(8) Commission shall mean the Commission of Industrial Relations;

(9) Commissioner shall mean a member of the commission; and

(10) Supervisor shall mean any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Source: Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1.

48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.

(1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission.

(4) The commission shall not be subject to the Administrative Procedure Act.

Source: Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

48-804.01 Presiding officer; clerk; personnel; appointment; duties.

The presiding officer of the commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding officer, keep a full and true record of the proceedings of the commission and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Source: Laws 1974, LB 819, § 3; Laws 2007, LB472, § 3.

48-805 Commissioners; qualifications.

The commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

Source: Laws 1947, c. 178, § 5, p. 589; Laws 2007, LB472, § 4.

48-806 Commissioner; compensation; expenses.

As soon as the same may be legally paid under the Constitution of Nebraska, the compensation of each commissioner shall be four hundred seventy-five dollars per day for each day's time actually engaged in the performance of the duties of his or her office. Each commissioner shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

Source: Laws 1947, c. 178, § 6, p. 599; Laws 1971, LB 822, § 1; Laws 1976, LB 710, § 1; Laws 1977, LB 302, § 1; Laws 1979, LB 444, § 3; Laws 1981, LB 188, § 1; Laws 1981, LB 204, § 83; Laws 1991, LB 856, § 1; Laws 2007, LB211, § 1; Laws 2007, LB472, § 5.

48-816.01 Hearing officer; appointment; when.

The presiding officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to

practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Source: Laws 1979, LB 444, § 6; Laws 2007, LB472, § 6.

48-838 Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.

(1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7.

Cross References

State Employees Collective Bargaining Act, see section 81-1369.

ARTICLE 10
AGE DISCRIMINATION

Section
48-1001. Act, how cited; discrimination in employment because of age; policy; declaration of purpose.
48-1002. Terms, defined.
48-1003. Limitation on prohibitions; practices not prevented or precluded.
48-1004. Unlawful employment practices; enumerated.
48-1005. Violations; penalty.
48-1006. Repealed. Laws 2007, LB 265, § 40.
48-1007. Equal Opportunity Commission; enforcement; powers.
48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.
48-1009. Court; jurisdiction; relief.
48-1010. Suits against governmental bodies; authorized.

48-1001 Act, how cited; discrimination in employment because of age; policy; declaration of purpose.

(1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2)(c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

Source: Laws 1963, c. 281, § 1, p. 838; Laws 1972, LB 1357, § 1; Laws 2007, LB265, § 13.

48-1002 Terms, defined.

For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person, but does not include an agency of the United States, except that such term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Source: Laws 1963, c. 281, § 2, p. 839; Laws 1972, LB 1357, § 2; Laws 1973, LB 265, § 1; Laws 1977, LB 162, § 20; Laws 1983, LB 424, § 1; Laws 1983, LB 626, § 73; Laws 1993, LB 121, § 296; Laws 2007, LB265, § 14.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

48-1003 Limitation on prohibitions; practices not prevented or precluded.

(1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action

otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

Source: Laws 1963, c. 281, § 3, p. 839; Laws 1972, LB 1357, § 3; Laws 1979, LB 161, § 2; Laws 1983, LB 424, § 2; Laws 2007, LB265, § 15.

48-1004 Unlawful employment practices; enumerated.

(1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

Source: Laws 1963, c. 281, § 4, p. 840; Laws 1972, LB 1357, § 4; Laws 1977, LB 162, § 21; Laws 2007, LB265, § 16.

48-1005 Violations; penalty.

Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

Source: Laws 1963, c. 281, § 5, p. 840; Laws 1972, LB 1357, § 8; Laws 1977, LB 40, § 300; Laws 2007, LB265, § 17.

48-1006 Repealed. Laws 2007, LB 265, § 40.

48-1007 Equal Opportunity Commission; enforcement; powers.

The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under the act, (2) to cooperate with other federal, state, and local agencies and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act, (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act, and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Source: Laws 1972, LB 1357, § 5; Laws 1977, LB 162, § 22; Laws 2007, LB265, § 18.

48-1008 Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.

(1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Source: Laws 1972, LB 1357, § 6; Laws 1977, LB 162, § 23; Laws 1983, LB 424, § 3; Laws 2007, LB265, § 19.

48-1009 Court; jurisdiction; relief.

In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Source: Laws 1972, LB 1357, § 7; Laws 2007, LB265, § 20.

48-1010 Suits against governmental bodies; authorized.

The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.

Source: Laws 1983, LB 424, § 4; Laws 2007, LB265, § 21.

ARTICLE 12

WAGES

(a) MINIMUM WAGES

(b) SEX DISCRIMINATION

(c) WAGE PAYMENT AND COLLECTION

(a) MINIMUM WAGES

48-1203 Wages; minimum rate.

(1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

(a) Five dollars and fifteen cents per hour through July 23, 2007;

(b) Five dollars and eighty-five cents per hour on and after July 24, 2007, through July 23, 2008;

(c) Six dollars and fifty-five cents per hour on and after July 24, 2008, through July 23, 2009; and

(d) Seven dollars and twenty-five cents per hour on and after July 24, 2009.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

Source: Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22.

48-1203.01 Training wage; rate; limitations.

An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

Source: Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.

(b) SEX DISCRIMINATION

48-1220 Terms, defined.

As used in sections 48-1219 to 48-1227.01, unless the context otherwise requires:

(1) Employee shall mean any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies;

(2) Employer shall mean any person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the State of Nebraska, its governmental agencies, and political subdivisions, regardless of the number of employees, but such term shall not include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe;

(3) Wage rate shall mean all compensation for employment including payment in kind and amounts paid by employers for employee benefits as defined by the commission in regulations issued under sections 48-1219 to 48-1227;

(4) Employ shall include to suffer or permit to work;

(5) Commission shall mean the Equal Opportunity Commission; and

(6) Person shall include one or more individuals, partnerships, limited liability companies, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

Source: Laws 1969, c. 389, § 2, p. 1366; Laws 1983, LB 424, § 5; Laws 1983, LB 626, § 75; Laws 1993, LB 121, § 299; Laws 2005, LB 10, § 1.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

(c) WAGE PAYMENT AND COLLECTION

48-1228 Act, how cited.

Sections 48-1228 to 48-1232 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Source: Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1.

48-1229 Terms, defined.

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(2) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This sub-

division is not intended to be a codification of the common law and shall be considered complete as written;

(3) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Source: Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2.

48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; unpaid wages; when due.

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has written agreement with the employee to deduct, withhold, or divert.

(2) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Source: Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3.

48-1230.01 Employer; unpaid wages constituting commissions; duties.

Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

Source: Laws 2007, LB255, § 4.

48-1232 Employee; claim; judgment; additional recovery from employer; when.

If an employee establishes a claim and secures judgment on such claim under section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of 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 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5.

ARTICLE 16

NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

(b) NEBRASKA WORKFORCE INVESTMENT ACT

48-1623 Nebraska Workforce Investment Board; members.

(1) The Nebraska Workforce Investment Board is established to assist in the development of a state plan to carry out the functions described in the federal Workforce Investment Act.

(2) The state board shall include:

(a) The Governor;

(b) Two members of the Legislature selected by and serving at the pleasure of the Speaker of the Legislature; and

(c) Members appointed by the Governor who serve at the pleasure of the Governor who are:

(i) Representatives of business in the state who:

(A) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in subdivision (2)(a)(i) of section 48-1620;

(B) Represent businesses with employment opportunities that reflect the employment opportunities of the state; and

(C) Are appointed from among individuals nominated by state business organizations and business trade associations;

(ii) Chief elected officials representing both cities and counties;

(iii) Representatives of labor organizations who have been nominated by state labor federations;

(iv) Representatives of individuals and organizations that have experience with respect to youth programs authorized under section 129 of the federal Workforce Investment Act, 29 U.S.C. 2854;

(v) Representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the state;

(vi)(A) The officials from each of the lead state agencies with responsibility for the programs and activities that are described in section 48-1619 and carried out by one-stop partners; and

(B) In any case in which no lead state agency official has responsibility for such a program, service, or activity, a representative in the state with expertise relating to such program, service, or activity; and

(vii) Such other representatives and state agency officials as the Governor may designate.

(3) The two members of the Legislature serving on the state board shall be nonvoting, ex officio members. All other members shall be voting members. The Governor may designate a representative to participate on his or her behalf in state board committee and general meetings. Such representative shall be entitled to vote on matters brought before the board and shall be considered a member of the board for purposes of determining if a quorum is present.

(4) Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state board shall be private sector representatives described in subdivision (2)(c)(i) of this section. The Governor shall select a chairperson and a vice-chairperson for the state board from among the representatives described in such subdivision.

(6) To transact business at all meetings of the state board, a quorum of voting members must be present. A majority of the voting members shall constitute a quorum of the Nebraska Workforce Investment Board.

Source: Laws 2001, LB 193, § 8; Laws 2003, LB 194, § 1; Laws 2008, LB210, § 1.
Effective date July 18, 2008.

ARTICLE 18

NEBRASKA AMUSEMENT RIDE ACT

Section
48-1809. Permit fees.
48-1810. Repealed. Laws 2007, LB 265, § 38.

48-1809 Permit fees.

The commissioner shall establish by rules and regulations a schedule of permit fees not to exceed fifty dollars for each amusement ride. Such permit fees shall be established with due regard for the costs of administering the Nebraska Amusement Ride Act and shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund.

Source: Laws 1987, LB 226, § 9; Laws 2007, LB265, § 25.

48-1810 Repealed. Laws 2007, LB 265, § 38.

ARTICLE 19
DRUG AND ALCOHOL TESTING

Section
48-1902. Terms, defined.

48-1902 Terms, defined.

For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor defined in subdivisions (1) through (4) of section 53-103, alcohol, spirits, wine, and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device shall mean intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department shall mean the Department of Health and Human Services;

(5) Department rules and regulations shall mean the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug shall mean any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee shall mean any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer shall mean the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Source: Laws 1988, LB 582, § 2; Laws 1993, LB 370, § 44; Laws 1994, LB 859, § 1; Laws 1996, LB 1044, § 276; Laws 2007, LB296, § 218.

ARTICLE 21
CONTRACTOR REGISTRATION

Section
48-2102. Legislative intent.
48-2103. Terms, defined.
48-2104. Registration required.
48-2107. Fees.
48-2114. Violation; citation; penalty; legal representation.
48-2115. Contractor Registration Cash Fund; created; use; investment.

48-2102 Legislative intent.

It is the intent of the Legislature that all contractors doing business in Nebraska be registered with the department. It is not the intent of the Legislature to endorse the quality or performance of services provided by any individual contractor.

Source: Laws 1994, LB 248, § 2; Laws 2008, LB204, § 1.
Effective date July 18, 2008.

48-2103 Terms, defined.

For purposes of the Contractor Registration Act:

(1) Commissioner means the Commissioner of Labor;

(2) Construction means work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically, but does not include the construction of water wells or installation of septic systems;

(3) Contractor means a person who engages in the business of construction and includes a subcontractor, a general contractor, and any other person arranging for the performance of construction. A person who earns less than five thousand dollars annually or who performs work or has work performed on his or her own property is not a contractor;

(4) Department means the Department of Labor; and

(5) Working days means Mondays through Fridays but does not include Saturdays, Sundays, or federal or state holidays. In computing fifteen working days, the day of receipt of any notice is not included and the last day of the fifteen working days is included.

Source: Laws 1994, LB 248, § 3; Laws 2008, LB204, § 2.
Effective date July 18, 2008.

48-2104 Registration required.

Before performing any construction work in Nebraska, a contractor shall be registered with the department. If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business.

Source: Laws 1994, LB 248, § 4; Laws 2008, LB204, § 3.
Effective date July 18, 2008.

48-2107 Fees.

(1) Each application or renewal under section 48-2105 shall be accompanied by a fee of forty dollars. The fee shall not be required when an amendment to an application is submitted.

(2) A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business. The affidavit shall contain (a) a statement that the contractor is self-employed and (b) a list of all employees employed on the date of the application and in the twelve-month period prior to such date and the dates of employment for each employee. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department.

Source: Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4.
Effective date July 18, 2008.

48-2114 Violation; citation; penalty; legal representation.

(1) The commissioner shall issue a citation to a contractor when an investigation reveals that the contractor has violated:

(a) The requirement that the contractor be registered; or

(b) The requirement that the contractor's registration information be substantially complete and accurate.

(2) When a citation is issued, the commissioner shall notify the contractor 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. 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 contractor shall have fifteen working days from 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 pursuant to the Administrative Procedure Act.

(4) If the contractor has never been registered under the Contractor Registration Act, the contractor shall have sixty working days from the date of the citation to register. No administrative penalty shall be assessed if the contractor registers within such sixty-day period. This subsection shall remain in effect until March 1, 2009.

(5) In any civil action to enforce the Contractor Registration Act, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

Source: Laws 1994, LB 248, § 12; Laws 2001, LB 180, § 8; Laws 2008, LB204, § 5.
Effective date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

48-2115 Contractor Registration Cash Fund; created; use; investment.

There is hereby created the Contractor Registration Cash Fund to be administered by the department and used to enforce the Contractor Registration Act.

The fund shall consist of such sums as are appropriated to it by the Legislature and any fees collected in the administration of the act. All funds collected 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 1994, LB 248, § 13; Laws 1995, LB 7, § 52; Laws 2008, LB204, § 6.
Effective date July 18, 2008.

Cross References

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

ARTICLE 23
NEW HIRE REPORTING ACT

Section
48-2305. Multistate employer; transmission of reports.
48-2306. Employer; fine.
48-2307. Department; report.

48-2305 Multistate employer; transmission of reports.

An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with the New Hire Reporting Act by designating one of such states in which the employer has employees as the state to which the employer will transmit the report described in section 48-2303. Any Nebraska employer that transmits reports pursuant to this section shall notify the department in writing of the state which such employer designates for the purpose of transmitting reports.

Source: Laws 1997, LB 752, § 44; Laws 2007, LB296, § 219.

48-2306 Employer; fine.

On and after October 1, 1998, the department may levy a fine not to exceed twenty-five dollars for each employee not reported by the employer to the department. The department shall determine whether or not to levy a fine based upon the good faith efforts of an employer to comply with the New Hire Reporting Act. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1997, LB 752, § 45; Laws 2007, LB296, § 220.

48-2307 Department; report.

The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221.

ARTICLE 25
CONVEYANCE SAFETY ACT

Section

48-2501 Act, how cited.

Sections 48-2501 to 48-2533 shall be known and may be cited as the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 1; Laws 2007, LB265, § 26.

48-2502 Terms, defined.

For purposes of the Conveyance Safety Act:

(1) Certificate of inspection means a document issued by the commissioner that indicates that the conveyance has had the required safety inspection and tests and that the required fees have been paid;

(2) Commissioner means the Commissioner of Labor;

(3) Committee means the Conveyance Advisory Committee;

(4) Conveyance means any elevator, dumbwaiter, vertical reciprocating conveyor, escalator, moving sidewalk, automated people mover, and other equipment enumerated in section 48-2507 and not exempted under section 48-2508;

(5) Elevator contractor means any person who is engaged in the business of contracting services for erecting, constructing, installing, altering, servicing, testing, repairing, or maintaining conveyances;

(6) Elevator mechanic means any person who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining conveyances; and

(7) Person means an individual, a partnership, a limited liability company, a corporation, and any other business firm or company and includes a director, an officer, a member, a manager, and a superintendent of such an entity.

Source: Laws 2006, LB 489, § 2.

48-2503 Conveyance Advisory Committee; created; members; terms; expenses; meetings.

(1) The Conveyance Advisory Committee is created. One member shall be the state elevator inspector appointed pursuant to section 48-2512.01. One member shall be the State Fire Marshal or his or her designee. The Governor shall appoint the remaining members of the committee as follows: One representative from a major elevator manufacturing company; one representative from an elevator servicing company; one representative who is a building manager; one representative who is an elevator mechanic; and one representative of the general public from each county that has a population of more than one hundred thousand inhabitants. The committee shall be appointed within ninety days after January 1, 2008.

(2) The members of the committee appointed by the Governor shall serve for terms of three years, except that of the initial members appointed, two shall serve for terms of one year and three shall serve for terms of two years. The state elevator inspector and the State Fire Marshal or his or her designee shall serve continuously. The appointed members shall be reimbursed for their actual and necessary expenses for service on the committee as provided in sections 81-1174 to 81-1177. The members of the committee shall elect a chairperson who shall be the deciding vote in the event of a tie vote.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet quarterly at a time and place to be fixed by the committee for the consideration of code regulations and for the transaction of such other business as properly comes before it. Special meetings may be called by the chairperson or at the request of two or more members of the committee. Any appointed committee member absent from three consecutive meetings shall be dismissed.

Source: Laws 2006, LB 489, § 3; Laws 2007, LB265, § 28.

48-2504 Committee; powers and duties.

The committee:

(1) May consult with engineering authorities and organizations concerned with standard safety codes;

(2) Shall recommend to the commissioner rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances;

(3) Shall recommend to the commissioner qualifications for licensure as an elevator mechanic or elevator contractor and conditions for disciplinary actions, including suspension or revocation of a license;

(4) Shall recommend to the commissioner rules and regulations for temporary and emergency elevator mechanic thirty-day licenses;

(5) Shall recommend to the commissioner an enforcement program which will ensure compliance with the Conveyance Safety Act and the rules and regulations adopted and promulgated pursuant to the act. The enforcement program shall include the identification of property locations which are subject to the act, issuing notifications to violating property owners or operators, random onsite inspections and tests on existing installations, and assisting in development of public awareness programs; and

(6) Shall make recommendations to the commissioner regarding variances under section 48-2509, continuing education providers under section 48-2526, and license disciplinary actions under section 48-2528.

Source: Laws 2006, LB 489, § 4.

48-2505 Repealed. Laws 2007, LB 265, § 38.

48-2506 Commissioner; establish fee schedules; administer act.

(1) The commissioner shall, after a public hearing conducted by the commissioner or his or her designee, establish a reasonable schedule of fees for licenses, permits, certificates, and inspections authorized under the Conveyance Safety Act. The commissioner shall establish the fees at a level necessary to meet the costs of administering the act. Inspection fee schedules relating to the inspection of conveyances adopted by the commissioner prior to January 1, 2008, shall continue to be effective until they are amended or repealed by the commissioner.

(2) The commissioner shall administer the Conveyance Safety Act. It is the intent of the Legislature that, beginning in fiscal year 2008-09, the funding for the administration of the act shall be entirely from cash funds remitted to the Mechanical Safety Inspection Fund that are fees collected in the administration of the act.

Source: Laws 2006, LB 489, § 6; Laws 2007, LB265, § 29.

Cross References

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

48-2507 Applicability of act.

(1) The Conveyance Safety Act applies to the construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances. Conveyances include the following equipment, associated parts, and hoistways which are not exempted under section 48-2508:

(a) Hoisting and lowering mechanisms equipped with a car which moves between two or more landings. This equipment includes elevators;

(b) Power driven stairways and walkways for carrying persons between landings. This equipment includes:

(i) Escalators; and

(ii) Moving sidewalks; and

(c) Hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes:

(i) Dumbwaiters;

(ii) Material lifts and dumbwaiters with automatic transfer devices; and

(iii) Conveyors and related equipment within the scope of American Society of Mechanical Engineers B20.1.

(2) The act applies to the construction, operation, inspection, maintenance, alteration, and repair of automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes automated people movers.

(3) The act applies to conveyances in private residences located in counties that have a population of more than one hundred thousand inhabitants at the time of installation. Such conveyances are subject to inspection at installation but are not subject to periodic inspections.

Source: Laws 2006, LB 489, § 7; Laws 2007, LB265, § 30.

48-2508 Exemptions from act.

The Conveyance Safety Act does not apply to:

(1) Conveyances under the jurisdiction and subject to inspection by the United States Government;

(2) Conveyances used exclusively for agricultural purposes;

(3) Personnel hoists within the scope of American National Standards Institute A10.4;

(4) Material hoists within the scope of American National Standards Institute A10.5;

(5) Manlifts within the scope of American Society of Mechanical Engineers A90.1;

(6) Mobile scaffolds, towers, and platforms within the scope of American National Standards Institute A92;

(7) Powered platforms and equipment for exterior and interior maintenance within the scope of American National Standards Institute 120.1;

(8) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of American Society of Mechanical Engineers B30;

(9) Industrial trucks within the scope of American Society of Mechanical Engineers B56;

(10) Portable equipment, except for portable escalators which are covered by American National Standards Institute A17.1;

(11) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;

(12) Equipment for feeding or positioning materials at machine tools, printing presses, and similar equipment;

(13) Skip or furnace hoists;

(14) Wharf ramps;

(15) Railroad car lifts or dumpers;

(16) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by an elevator contractor;

(17) Manlifts, hoists, or conveyances used in grain elevators or feed mills;

(18) Dock levelators;

(19) Stairway chair lifts and platform lifts; and

(20) Conveyances in residences located in counties that have a population of one hundred thousand or less inhabitants.

Source: Laws 2006, LB 489, § 8; Laws 2007, LB265, § 31.

48-2509 Rules and regulations; commissioner; variance authorized; appeal.

(1) The commissioner shall adopt and promulgate rules and regulations which establish the regulations for conveyances under the Conveyance Safety Act. The rules and regulations may include the Safety Code for Elevators and Escalators, American Society of Mechanical Engineers A17.1 except those parts exempted under section 48-2508; the standards for conveyors and related equipment, American Society of Mechanical Engineers B20.1; and the Automated People Mover Standards, American Society of Civil Engineers 21. The commissioner shall annually review to determine if the most current form of such standards should be adopted.

(2) The commissioner may grant a variance from the rules and regulations adopted in subsection (1) of this section in individual situations upon good cause shown if the safety of those riding or using the conveyance is not compromised by the variance. The commissioner shall adopt and promulgate rules and regulations for the procedure to obtain a variance. The committee shall make recommendations to the commissioner regarding each variance requested. The decision of the commissioner in granting or refusing to grant a variance may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 489, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

48-2510 Registration of conveyances; when required.

Conveyances upon which construction is started subsequent to January 1, 2008, shall be registered at the time they are completed and placed in service.

Source: Laws 2006, LB 489, § 10.

48-2511 Certificate of inspection; when required; display of certificate.

On and after January 1, 2008: Prior to any newly installed conveyance being used for the first time, the property owner or lessee shall obtain a certificate of inspection from the commissioner. A fee established under section 48-2506 shall be paid for the certificate of inspection. A licensed elevator contractor

shall complete and submit first-time registrations for new installations to the state elevator inspector for the inspector's approval. A certificate of inspection shall be clearly displayed in an elevator car and on or in each other conveyance.

Source: Laws 2006, LB 489, § 11.

48-2512 Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements.

(1) No person shall wire, alter, replace, remove, or dismantle an existing conveyance contained within a building or structure located in a county that has a population of more than one hundred thousand inhabitants unless such person is a licensed elevator mechanic or he or she is working under the direct supervision of a person who is a licensed elevator mechanic. Neither a licensed elevator mechanic nor a licensed elevator contractor is required to perform nonmechanical maintenance of a conveyance. Neither a licensed elevator contractor nor a licensed elevator mechanic is required for removing or dismantling conveyances which are destroyed as a result of a complete demolition of a secured building.

(2) It shall be the responsibility of licensed elevator mechanics and licensed elevator contractors to ensure that installation and service of a conveyance is performed in compliance with applicable fire and safety codes. It shall be the responsibility of the owner of the conveyance to ensure that the conveyance is maintained in compliance with applicable fire and safety codes.

(3) All new conveyance installations shall be performed by a licensed elevator mechanic under the control of a licensed elevator contractor or by a licensed elevator contractor. Subsequent to installation, a licensed elevator contractor shall certify compliance with the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 12; Laws 2007, LB265, § 32.

48-2512.01 State elevator inspector; qualifications; deputy inspectors; appointment; qualifications.

(1) The Commissioner of Labor shall appoint a state elevator inspector, subject to the approval of the Governor, who shall work under the direct supervision of the commissioner. The state elevator inspector serving on January 1, 2008, shall continue to serve unless removed by the commissioner.

(2) The person so appointed shall be qualified by (a) not less than five years' experience in the installation, maintenance, and repair of elevators as determined by the commissioner, (b) certification as a qualified elevator inspector by an association accredited by the American Society of Mechanical Engineers, or (c) not less than five years' journeyman experience in elevator installation, maintenance, and inspection as determined by the Commissioner of Labor and shall be familiar with the inspection process and rules and regulations adopted and promulgated under the Conveyance Safety Act.

(3) The commissioner, subject to the approval of the Governor, may appoint deputy inspectors possessing the same qualifications as the state elevator inspector. A qualified individual may apply for the position of inspector or

deputy inspector. The application shall include the applicant's social security number, but such social security number shall not be a public record.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 14, p. 561; C.S.1922, § 7695; C.S.1929, § 48-414; R.S.1943, § 48-418; Laws 1965, c. 283, § 1, p. 810; Laws 1967, c. 297, § 1, p. 810; Laws 1973, LB 320, § 1; Laws 1982, LB 659, § 2; Laws 1987, LB 36, § 1; Laws 1997, LB 752, § 126; Laws 2006, LB 489, § 35; R.S.Supp.,2006, § 48-418; Laws 2007, LB265, § 27.

Cross References

Conveyance Safety Act, see section 48-2501.

48-2513 State elevator inspector; inspections required; written report.

(1) Except as provided otherwise in the Conveyance Safety Act, the state elevator inspector shall inspect or cause to be inspected conveyances which are located in a building or structure, other than a private residence, at least once every twelve months in order to determine whether such conveyances are in a safe and satisfactory condition and are properly constructed and maintained for their intended use.

(2) Subsequent to inspection of a conveyance, the inspector shall supply owners or lessees with a written inspection report describing any and all violations. An owner has thirty days after the date of the published inspection report to correct the violations.

(3) All tests done for the conveyance inspection shall be performed by a licensed elevator mechanic.

Source: Laws 2006, LB 489, § 13.

48-2514 Alternative inspections; requirements.

(1) No inspection shall be required under the Conveyance Safety Act when an owner or user of a conveyance obtains an inspection by a representative of a reputable insurance company licensed to do business in Nebraska, obtains a policy of insurance from such company upon the conveyance and files with the commissioner a certificate of inspection by such insurance company, files a statement that such conveyance is insured, and pays an administrative fee established pursuant to section 48-2506.

(2) No inspection shall be required under the act when there has been an annual inspection under a city ordinance which meets the standards of the act.

Source: Laws 2006, LB 489, § 14.

48-2515 Special inspection; expenses; fee; report.

If at any time the owner or user of a conveyance desires a special inspection of a conveyance, it shall be made by the state elevator inspector after due request therefor and the inspector making the inspection shall collect his or her expenses in connection therewith and a fee established pursuant to section 48-2506. A report of the inspection shall be provided to the owner or user who requested the inspection upon their request.

Source: Laws 2006, LB 489, § 15.

48-2516 Certificate of inspection; issuance; form.

Upon a conveyance passing an inspection under section 48-2513, 48-2514, or 48-2515 and receipt of the inspection fee, the commissioner shall issue the owner or user of the conveyance a certificate of inspection, upon forms prescribed by the commissioner.

Source: Laws 2006, LB 489, § 16.

48-2517 State elevator inspector; records required.

The state elevator inspector shall maintain a complete and accurate record of the name of the owner or user of each conveyance subject to sections 48-2513 and 48-2514 and a full description of the conveyance and the date when last inspected.

Source: Laws 2006, LB 489, § 17.

48-2518 Entry upon property for purpose of inspection.

The commissioner, the state elevator inspector, and the deputy inspectors shall have the right and power to enter any public building or structure for the purpose of inspecting any conveyance subject to the Conveyance Safety Act or gathering information with reference thereto.

Source: Laws 2006, LB 489, § 18.

48-2519 Defective or unsafe condition; notice to owner or user; temporary certificate; when issued.

The state elevator inspector shall notify the owner or user in writing of any conveyance found to be unsafe or unfit for operation setting forth the nature and extent of any defect or other unsafe condition. If the conveyance can be used without making repair or replacement of defective parts or may be used in a limited capacity before repairs or replacements are made, the state elevator inspector may issue a temporary certificate of inspection which shall state the terms and conditions of operation under the temporary certificate. The temporary certificate shall be valid for no longer than thirty days unless an extension is granted by the state elevator inspector for good cause shown.

Source: Laws 2006, LB 489, § 19.

48-2520 Accident involving conveyance; notification required; when; state elevator inspector; duties.

The owner of a conveyance shall notify the state elevator inspector of any accident causing personal injury or property damage in excess of one thousand dollars involving a conveyance on or before the close of business the next business day following the accident, and the conveyance involved shall not operate until the state elevator inspector has conducted an investigation of the accident and has approved the operation of the conveyance. The state elevator inspector shall investigate and report to the commissioner the cause of any conveyance accident that may occur in the state, the loss of life, the injuries sustained, and such other data as may be of benefit in preventing other similar accidents.

Source: Laws 2006, LB 489, § 20.

48-2521 Elevator mechanic license; elevator contractor license; application; form; contents.

(1) Any person wishing to engage in the work of an elevator mechanic shall apply for and obtain an elevator mechanic license from the commissioner. The application shall be on a form provided by the commissioner.

(2) Any person wishing to engage in the business of an elevator contractor shall apply for and obtain an elevator contractor license from the commissioner. The application shall be on a form provided by the commissioner.

(3) Each application shall contain:

(a) If an individual, the name, residence and business address, and social security number of the applicant;

(b) If a partnership, the name, residence and business address, and social security number of each partner;

(c) If a domestic corporation, the name and business address of the corporation and the name, residence address, and social security number of the principal officer of the corporation; and if a corporation other than a domestic corporation, the name and address of an agent located locally who is authorized to accept service of process and official notices;

(d) The number of years the applicant has engaged in the business of installing, inspecting, maintaining, or servicing conveyances;

(e) The approximate number of individuals to be employed by the applicant and, if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;

(f) Satisfactory evidence that the applicant is or will be covered by general liability, personal injury, and property damage insurance;

(g) Permission for the Department of Labor to access the criminal history record information of individuals, partners, or officers maintained by the Federal Bureau of Investigation through the Nebraska State Patrol;

(h) A description of all accidents causing personal injury or property damage in excess of one thousand dollars involving conveyances installed, inspected, maintained, or serviced by the applicant; and

(i) Such other information as the commissioner may by rule and regulation require.

(4) Social security numbers on applications shall not be made public or be considered a part of a public record.

Source: Laws 2006, LB 489, § 21.

48-2522 Standards for licensure of elevator mechanics; commissioner; duties.

The commissioner shall adopt and promulgate rules and regulations establishing standards for licensure of elevator mechanics. An applicant for an elevator mechanic license shall demonstrate the following qualifications before being granted an elevator mechanic license:

(1) Not less than three years' work experience in the conveyance industry, in construction, maintenance, and service or repair, as verified by current and previous employers;

(2) One of the following:

(a) Satisfactory completion of a written examination administered by the committee on the most recent referenced codes and standards;

(b) Acceptable proof that the applicant has worked as a conveyance constructor, maintenance, or repair person. Such person shall have worked as an elevator mechanic without the direct and immediate supervision of a licensed elevator contractor and have passed a written examination approved by the commissioner. This employment shall not be less than three years immediately prior to the effective date of the license;

(c) Certificates of completion and successfully passing an elevator mechanic examination of a nationally recognized training program for the conveyance industry as provided by the National Elevator Industry Educational Program or its equivalent; or

(d) Certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of the Conveyance Safety Act and registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council; and

(3) Any additional qualifications adopted and promulgated in rule and regulation by the commissioner.

Source: Laws 2006, LB 489, § 22.

48-2523 Elevator contractor license; work experience required.

An applicant for an elevator contractor license shall demonstrate five years' work experience in the conveyance industry in construction, maintenance, and service or repair, as verified by current or previous employers.

Source: Laws 2006, LB 489, § 23.

48-2524 Reciprocity.

Upon application, an elevator mechanic license or an elevator contractor license may be issued to a person holding a valid license from a state having standards substantially equal to those of the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 24.

48-2525 License; issuance; renewal.

Upon approval of an application for licensure as an elevator mechanic, the commissioner may issue a license which shall be renewable biennially if the continuing education requirements are met. The fee for licenses and for license renewal for elevator mechanic licenses and elevator contractor licenses shall be set by the commissioner under section 48-2506.

Source: Laws 2006, LB 489, § 25.

48-2526 Continuing education; extension; when granted; approved providers; records.

(1) The renewal of elevator mechanic licenses granted under the Conveyance Safety Act shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education on new and existing rules and regulations adopted and promulgated by the commissioner. Such course shall consist of not less than eight hours of instruction that shall be attended and completed within one year immediately preceding any license renewal. The individual holding the elevator mechanic license shall pay the cost of such course.

(2) The courses shall be taught by instructors through continuing education providers that may include association seminars and labor training programs. The committee shall make recommendations to the commissioner about approval of continuing education providers.

(3) An elevator mechanic licensee who is unable to complete the continuing education course required under this section prior to the expiration of the license due to a temporary disability may apply for an extension from the state elevator inspector. The extension shall be on a form provided by the state elevator inspector which shall be signed by the applicant and accompanied by a certified statement from a competent physician attesting to such temporary disability. Upon the termination of such temporary disability, the elevator mechanic licensee shall submit to the state elevator inspector a certified statement from the same physician, if practicable, attesting to the termination of such temporary disability. At such time an extension sticker, valid for ninety days, shall be issued to the licensed elevator mechanic and affixed to the license. Such extension shall be renewable for periods of ninety days upon a showing that the disability continues.

(4) Approved continuing education providers shall keep uniform records, for a period of ten years, of attendance of elevator mechanic licensees following a format approved by the state elevator inspector, and such records shall be available for inspection by the state elevator inspector upon request. Approved continuing education providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify such attendance records or certificates of completion shall constitute grounds for suspension or revocation of the approval required under this section.

Source: Laws 2006, LB 489, § 26.

48-2527 Insurance policy; requirements; delivery; notice of alteration or cancellation.

(1) An elevator contractor shall submit to the commissioner an insurance policy, or certified copy thereof, issued by an insurance company authorized to do business in the state to provide general liability coverage of at least one million dollars for injury or death of any one person and one million dollars for injury or death of any number of persons in any one occurrence and to provide coverage of at least five hundred thousand dollars for property damage in any one occurrence and workers' compensation insurance coverage as required under the Nebraska Workers' Compensation Act.

(2) Such policies, or certified copies thereof, shall be delivered to the commissioner before or at the time of the issuance of a license. In the event of any material alteration or cancellation of any policy, at least ten days' notice thereof shall be given to the commissioner.

Source: Laws 2006, LB 489, § 27.

48-2528 Elevator contractor license; revocation; grounds; elevator mechanic license; disciplinary actions; grounds; procedure; decision; appeal.

(1) An elevator contractor license issued under the Conveyance Safety Act may be revoked by the commissioner upon verification that the elevator contractor licensee lacks the insurance coverage required by section 48-2527.

(2) An elevator mechanic license or an elevator contractor license issued under the act may be suspended, revoked, or subject to a civil penalty not to exceed five thousand dollars by the commissioner, after notice and hearing, if the licensee:

(a) Makes a false statement as to material matter in the license application;

(b) Commits fraud, misrepresentation, or bribery in obtaining the license; or

(c) Violates any other provision of the act.

(3) No license shall be suspended, revoked, or subject to civil penalty until after a hearing is held before the committee and the commissioner or his or her designee. The hearing shall be held within sixty days after notice of the violation is received and all interested parties shall receive written notice of the hearing at least fifteen days prior to the hearing. Within fifteen days after the hearing, the committee shall make recommendations to the commissioner or his or her designee of appropriate penalties, if any, warranted under the circumstances of the case. The committee does not have the power to suspend or revoke licenses or impose civil penalties. Within thirty days after the hearing, the commissioner shall issue a decision which may include license suspension, license revocation, and civil penalties. The decision of the commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 489, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

48-2529 Temporary and emergency elevator mechanic thirty-day licenses.

The commissioner shall adopt and promulgate rules and regulations establishing standards and procedures for the issuance of temporary and emergency elevator mechanic thirty-day licenses and for the extension of such licenses for good cause shown.

Source: Laws 2006, LB 489, § 29.

48-2530 Request for investigation of alleged violation; preliminary inquiry; formal investigation; procedure.

(1) Any person may make a request for an investigation into an alleged violation of the Conveyance Safety Act by giving notice to the commissioner or state elevator inspector of such violation or danger.

(2) Upon receipt of a request for an investigation, the commissioner or state elevator inspector shall perform a preliminary inquiry into the charges contained in the request for investigation. A request for an investigation may be made in person or by telephone call and shall set forth with reasonable particularity the grounds for the request for an investigation. During the preliminary inquiry, the name, address, and telephone number of the person making the request for an investigation shall be available only to the commissioner, state elevator inspector, or other person carrying out the preliminary inquiry on behalf of the commissioner or state elevator inspector. The commissioner or state elevator inspector shall keep a record of each request for an investigation received under this section for three years after such request is made.

(3) If after the preliminary inquiry the commissioner or state elevator inspector determines that there are reasonable grounds to believe that such violation or danger exists and is likely to continue to exist such that the operation of the conveyance endangers the public, the commissioner or state elevator inspector shall cause a formal investigation to be made. During the formal investigation, a statement shall be taken from the person who made the request for an investigation and the person's name, address, and telephone number shall be made available to any opposing parties upon request.

(4) If the commissioner or state elevator inspector determines that there are no reasonable grounds to believe that a violation or danger exists under either subsection (2) or (3) of this section, the commissioner shall notify the person requesting the investigation in writing of such determination.

Source: Laws 2006, LB 489, § 30.

48-2531 Act; how construed; liability.

The Conveyance Safety Act shall not be construed to relieve or lessen the responsibility or liability of any person owning, operating, controlling, maintaining, erecting, constructing, installing, altering, testing, or repairing any conveyance covered by the act for damages to person or property caused by any defect therein. By administering the Conveyance Safety Act, the state and its officers and employees assume no liability for accidents involving a conveyance.

Source: Laws 2006, LB 489, § 31.

48-2532 Compliance with code at time of installation; notification of dangerous condition.

Under the Conveyance Safety Act, conveyances shall be required to comply with the code standards applicable at the time such conveyance was or is installed. However, if, upon the inspection of any conveyance, (1) the conveyance is found to be in a dangerous condition or there is an immediate hazard to those using such conveyance or (2) the design or the method of operation in combination with devices used is considered inherently dangerous in the opinion of the state elevator inspector, the state elevator inspector shall notify the owner of the conveyance of such condition and shall order such alterations or additions as may be deemed necessary to eliminate the dangerous condition.

Source: Laws 2006, LB 489, § 32.

48-2533 Violations; penalty.

(1) Any person who knowingly violates the Conveyance Safety Act is guilty of a Class V misdemeanor. Each violation shall be a separate offense.

(2) Any person who installs a conveyance in violation of the Conveyance Safety Act is guilty of a Class II misdemeanor.

Source: Laws 2006, LB 489, § 33.

CHAPTER 49
LAW

Article.
5. Publication and Distribution of Session Laws and Journals. 49-506.
6. Printing and Distribution of Statutes. 49-617.
8. Definitions, Construction, and Citation. 49-801, 49-801.01.
14. Nebraska Political Accountability and Disclosure Act.
(a) General Provisions. 49-1401 to 49-1434.
(b) Campaign Practices. 49-1445 to 49-1479.02.
(c) Lobbying Practices. 49-1480.01 to 49-1488.01.
(d) Conflicts of Interest. 49-1494 to 49-14,104.
(e) Nebraska Accountability and Disclosure Commission. 49-14,112 to 49-14,140.

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 Aeronautics, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environmental Quality, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Roads, 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.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section
49-617. Printing of statutes; distribution of copies.

49-617 Printing of statutes; distribution of copies.

The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; four copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side

of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Auditor of Public Accounts; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Public Employees Retirement Board, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Source: Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 326, § 1, p. 865; Laws 1967, c. 325, § 1, p. 863; Laws 1971, LB 36, § 4; Laws 1972, LB 1174, § 1; Laws 1972, LB 1032, § 254; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws

1973, LB 572, § 1; Laws 1973, LB 563, § 4; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section
49-801. Statutes; terms, defined.
49-801.01. Internal Revenue Code; reference.

49-801 Statutes; terms, defined.

Unless the context is shown to intend otherwise, words and phrases in the statutes of Nebraska hereafter enacted are used in the following sense:

(1) Acquire when used in connection with a grant of power or property right to any person shall include the purchase, grant, gift, devise, bequest, and obtaining by eminent domain;

(2) Action shall include any proceeding in any court of this state;

(3) Attorney shall mean attorney at law;

(4) Company shall include any corporation, partnership, limited liability company, joint-stock company, joint venture, or association;

(5) Domestic when applied to corporations shall mean all those created by authority of this state;

(6) Federal shall refer to the United States;

(7) Foreign when applied to corporations shall include all those created by authority other than that of this state;

(8) Grantee shall include every person to whom any estate or interest passes in or by any conveyance;

(9) Grantor shall include every person from or by whom any estate or interest passes in or by any conveyance;

(10) Inhabitant shall be construed to mean a resident in the particular locality in reference to which that word is used;

(11) Land or real estate shall include lands, tenements, and hereditaments and all rights thereto and interest therein other than a chattel interest;

(12) Magistrate shall include judge of the county court and clerk magistrate;

(13) Month shall mean calendar month;

(14) Oath shall include affirmation in all cases in which an affirmation may be substituted for an oath;

(15) Peace officer shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

(16) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(17) Personal estate shall include money, goods, chattels, claims, and evidences of debt;

(18) Process shall mean a summons, subpoena, or notice to appear issued out of a court in the course of judicial proceedings;

(19) Service animal shall have the same meaning as in 28 C.F.R. 36.104, as such regulation existed on January 1, 2008;

(20) State when applied to different states of the United States shall be construed to extend to and include the District of Columbia and the several territories organized by Congress;

(21) Sworn shall include affirmed in all cases in which an affirmation may be substituted for an oath;

(22) The United States shall include territories, outlying possessions, and the District of Columbia;

(23) Violate shall include failure to comply with;

(24) Writ shall signify an order or citation in writing issued in the name of the state out of a court or by a judicial officer; and

(25) Year shall mean calendar year.

Source: Laws 1947, c. 182, § 1, p. 601; Laws 1967, c. 175, § 2, p. 490; Laws 1972, LB 1032, § 255; Laws 1975, LB 481, § 30; Laws 1984, LB 13, § 83; Laws 1988, LB 1030, § 43; Laws 1993, LB 121, § 303; Laws 2008, LB806, § 12.
Effective date July 18, 2008.

49-801.01 Internal Revenue Code; reference.

Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on March 11, 2008.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1; Laws 2008, LB896, § 1.
Effective date March 11, 2008.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section
49-1401. Act, how cited.
49-1409. Candidate, defined.

(a) GENERAL PROVISIONS

49-1401 Act, how cited.

Sections 49-1401 to 49-14,141 shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 1; Laws 1981, LB 134, § 1; Laws 1986, LB 548, § 11; Laws 1987, LB 480, § 1; Laws 1989, LB 815, § 1; Laws 1991, LB 232, § 1; Laws 1994, LB 872, § 1; Laws 1994, LB 1243, § 2; Laws 1995, LB 28, § 3; Laws 1995, LB 399, § 1; Laws 1997, LB 49, § 1; Laws 1997, LB 420, § 15; Laws 1999, LB 581, § 1; Laws 2000, LB 438, § 1; Laws 2000, LB 1021, § 1; Laws 2001, LB 242, § 1; Laws 2002, LB 1003, § 34; Laws 2005, LB 242, § 2; Laws 2007, LB464, § 2; Laws 2007, LB527, § 1.

49-1409 Candidate, defined.

(1) Candidate shall mean an individual: (a) Who files, or on behalf of whom is filed, a fee, affidavit, nomination papers, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus, committee, or convention is certified to the appropriate filing official; (c) who is an officeholder who is the subject of a recall vote; or (d) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. An elected officeholder shall, if eligible under law, be considered to be a candidate for reelection to that same office for the purposes of the Nebraska Political Accountability and Disclosure Act only.

(2) Candidate shall not include any individual who is a candidate within the meaning of the Federal Election Campaign Act of 1971, 2 U.S.C. 431, as such section existed on January 1, 2006.

Source: Laws 1976, LB 987, § 9; Laws 1980, LB 535, § 1; Laws 2005, LB 242, § 3.

49-1413 Committee, defined.

(1) Committee shall mean (a) any combination of two or more individuals which receives contributions or makes expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions or (b) a person whose primary purpose is to receive contributions or make expenditures and who receives or makes contributions or expenditures of over five thousand dollars in a calendar year for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or the qualification, passage, or defeat of one or more ballot questions, except that an individual, other than a candidate, shall not constitute a committee.

(2) Except as otherwise provided in section 49-1445, a committee shall be considered formed and subject to the Nebraska Political Accountability and

Disclosure Act upon raising, receiving, or spending over the five thousand dollars in a calendar year referred to in this section.

(3) A corporation, labor organization, or industry, trade, or professional association is not a committee if it makes expenditures or provides personal services pursuant to sections 49-1469 to 49-1469.08.

Source: Laws 1976, LB 987, § 13; Laws 1980, LB 535, § 3; Laws 1983, LB 230, § 1; Laws 1987, LB 480, § 2; Laws 1999, LB 416, § 2; Laws 2005, LB 242, § 4.

49-1419 Expenditure, defined.

(1) Expenditure shall mean a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

(2) Expenditure shall include a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure shall not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure;

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders;

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference;

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting; or

(e) An expenditure for nonpartisan voter registration activities. This subdivision shall not apply if a candidate or a group of candidates sponsors, finances, or is identified by name with the activity. This subdivision shall apply to an activity performed pursuant to the Election Act by an election commissioner or other registration official who is identified by name with the activity.

(4) Expenditure for purposes of sections 49-1480 to 49-1492.01 shall mean an advance, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value and any contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure shall not include payments for transportation by lobbyists or the cost of communicating positions from a principal to a lobbyist or from a lobbyist to a principal.

Source: Laws 1976, LB 987, § 19; Laws 1979, LB 162, § 1; Laws 1994, LB 76, § 567; Laws 1997, LB 49, § 5; Laws 2005, LB 242, § 5.

Cross References

Election Act, see section 32-101.

49-1420 Filed, filer, and filing official; defined.

(1) Filed shall mean the receipt by the appropriate filing official of a statement or report required to be filed under the Nebraska Political Accountability and Disclosure Act.

(2) Filer shall mean each person required to file a statement or report pursuant to the act.

(3) Filing official shall mean the official designated pursuant to the act to receive required statements and reports.

Source: Laws 1976, LB 987, § 20; Laws 2005, LB 242, § 6.

49-1434 Principal, lobbyist, defined.

(1) Principal means a person who authorizes a lobbyist to lobby in behalf of that principal.

(2) Lobbyist means a person who is authorized to lobby on behalf of a principal and includes an officer, agent, attorney, or employee of the principal whose regular duties include lobbying.

(3) Principal or lobbyist does not include:

(a) A public official or employee of a branch of state government, except the University of Nebraska, or an elected official of a political subdivision who is acting in the course or scope of his or her office or employment;

(b) Any publisher, owner, or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business;

(c) An employee of a principal or lobbyist whose duties are confined to typing, filing, and other types of clerical office work;

(d) Any person who limits his or her activities (i) to appearances before legislative committees and who so advises the committee at the time of his or her appearance whom he or she represents or that he or she appears at the invitation of a named member of the Legislature or at the direction of the Governor or (ii) to writing letters or furnishing written material to individual members of the Legislature or to the committees thereof;

(e) Any individual who does not engage in lobbying for another person as defined in section 49-1438; or

(f) An employee of a political subdivision whose regular employment duties do not ordinarily include lobbying activities as long as such employee is not additionally compensated for such lobbying activities, other than his or her regular salary, and is not reimbursed for any lobbying expenditures except his or her travel, lodging, and meal expenses and the meal expenses for members of the Legislature.

Source: Laws 1976, LB 987, § 34; Laws 1979, LB 162, § 2; Laws 1991, LB 232, § 3; Laws 2006, LB 940, § 3.

(b) CAMPAIGN PRACTICES

49-1445 Candidate for office; candidate committee; slate or team; committee; when formed; violation; penalty.

(1) A candidate shall form a candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year.

(2) A candidate committee may consist of one member with the candidate being the member.

(3) A person who is a candidate for more than one office shall form a candidate committee for an office upon raising, receiving, or expending more than five thousand dollars in a calendar year for that office.

(4) Two or more candidates who campaign as a slate or team for public office shall form a committee upon raising, receiving, or expending jointly in any combination more than five thousand dollars in a calendar year.

(5) The fee to file for office shall not be included in determining if a candidate has raised, received, or expended more than five thousand dollars in a calendar year.

(6) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 45; Laws 1980, LB 535, § 5; Laws 1983, LB 230, § 2; Laws 1987, LB 480, § 3; Laws 1990, LB 601, § 1; Laws 1999, LB 416, § 3; Laws 2005, LB 242, § 7.

49-1446 Committee; treasurer; depository account; contributions and expenditures; requirements; reports; commingling funds; violations; penalty.

(1) Each committee shall have a treasurer who is a qualified elector of this state. A candidate may appoint himself or herself as the candidate committee treasurer.

(2) Except for funds received as provided in the Campaign Finance Limitation Act, each committee shall designate one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository.

(3) No contribution shall be accepted and no expenditure shall be made by a committee which has not filed a statement of organization and which does not have a treasurer. When the office of treasurer in a candidate committee is vacant, the candidate shall be the treasurer until the candidate appoints a new treasurer.

(4) No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee.

(5) Contributions received by an individual acting in behalf of a committee shall be reported promptly to the committee's treasurer not later than five days before the closing date of any campaign statement required to be filed by the committee and shall be reported to the committee treasurer immediately if the contribution is received less than five days before the closing date.

(6) A contribution shall be considered received by a committee when it is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline.

(7) Contributions received by a committee shall not be commingled with any funds of an agent of the committee or of any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, as provided in section 49-1469.06, including independent expenditures made in such elections.

(8) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 46; Laws 1977, LB 41, § 40; Laws 1980, LB 535, § 6; Laws 1988, LB 1136, § 1; Laws 1993, LB 587, § 12; Laws 2005, LB 242, § 8.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-1446.01 Committee; certain expenditure of funds authorized.

(1) No committee, other than a political party committee, may expend funds except to make an expenditure, as defined in subsection (1), (2), or (3) of section 49-1419, or as provided in section 49-1446.03 or 49-1469.06.

(2) A candidate committee of an officeholder may make expenditures for the payment of installation and use of telephone and telefax machines located in an officeholder's public office and used by such officeholder.

(3) Any committee, including a political party committee, may invest funds in investments authorized for the state investment officer in the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Nothing in this section shall prohibit a separate segregated political fund from disbursing funds as provided in section 49-1469.06.

Source: Laws 1981, LB 134, § 5; Laws 1988, LB 1136, § 2; Laws 1988, LB 1174, § 1; Laws 1992, LB 722, § 1; Laws 1994, LB 1066, § 39; Laws 1997, LB 49, § 8; Laws 2002, LB 1086, § 3; Laws 2005, LB 242, § 9.

Cross References

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

49-1446.02 Committee; certain expenditure of funds; prohibited.

Notwithstanding any other provision of the Nebraska Political Accountability and Disclosure Act, no committee shall expend funds for the purchase or payment of:

(1) Clothes or medical or dental expenses of a candidate or the members of his or her immediate family;

(2) Installment payments for an automobile owned by a candidate;

(3) Mortgage or rental payments for a permanent residence of a candidate;

(4) The satisfaction of personal debts, including installment payments on personal loans, except campaign loans subject to reporting required by subsection (2) of section 49-1456;

(5) Personal services, including the services of a lawyer or accountant, except campaign services subject to reporting pursuant to the provisions of section 49-1455; or

(6) Office supplies, staff, or furnishings for the public office for which an individual is a candidate for nomination or election except as set out in subsection (2) of section 49-1446.01.

Source: Laws 1981, LB 134, § 6; Laws 1992, LB 722, § 2; Laws 2005, LB 242, § 10.

49-1446.03 Committee; expenditure of funds; authorized.

Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any committee may, in addition to the expenditures set forth in section 49-1446.01, make expenditures for the following:

(1) The necessary continued operation of the campaign office or offices of the candidate or political committee;

(2) Social events primarily for the benefit of campaign workers and volunteers or constituents;

(3) Obtaining public input and opinion;

(4) Repayment of campaign loans incurred prior to election day;

(5) Newsletters and other communications for the purpose of information, thanks, acknowledgment, or greetings or for the purpose of political organization and planning;

(6) Gifts of acknowledgment, including flowers and charitable contributions, except that gifts to any one individual shall not exceed fifty dollars in any one calendar year;

(7) Meals, lodging, and travel by an officeholder related to his or her candidacy and for members of the immediate family of the officeholder when involved in activities related to his or her candidacy;

(8) Conference fees, meals, lodging, and travel by an officeholder and his or her staff when involved in activities related to the duties of his or her public office; and

(9) In the case of the candidate committee for the Governor, conference fees, meals, lodging, and travel by the Governor, his or her staff, and his or her immediate family, when involved in activities related to the duties of the Governor.

Source: Laws 1981, LB 134, § 7; Laws 2005, LB 242, § 11.

49-1446.04 Candidate committee; loans; restrictions; civil penalty.

(1) A candidate committee shall not accept more than fifteen thousand dollars in loans prior to or during the first thirty days after formation of the candidate committee.

(2) After the thirty-day period and until the end of the term of the office to which the candidate sought nomination or election, the candidate committee shall not accept loans, other than loans allowed under subsection (2) of section 32-1608.03, in an aggregate amount of more than fifty percent of the contributions of money, other than the proceeds of loans, which the candidate committee has received during such period as of the date of the receipt of the proceeds of the loan. Any loans which have been repaid as of such date shall not be taken into account for purposes of the aggregate loan limit.

(3) A candidate committee shall not pay interest, fees, gratuities, or other sums in consideration of a loan, advance, or other extension of credit to the

candidate committee by the candidate, a member of the candidate's immediate family, or any business with which the candidate is associated.

(4) The penalty for violation of this section shall be a civil penalty of not less than two hundred fifty dollars and not more than the amount of money received by a candidate committee in violation of this section if the candidate committee received more than two hundred fifty dollars. The commission shall assess and collect the civil penalty and shall remit the penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1995, LB 399, § 2; Laws 2005, LB 242, § 12; Laws 2006, LB 188, § 13.

49-1446.06 Transferred to section 49-1474.02.

49-1447 Committee treasurer; statements or reports; duties; committee records; violation; penalty.

(1) The committee treasurer shall keep detailed accounts, records, bills, and receipts necessary to substantiate the information contained in a statement or report filed pursuant to sections 49-1445 to 49-1479.02 or rules and regulations adopted and promulgated under the Nebraska Political Accountability and Disclosure Act.

(2)(a) For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee required to be filed under the act and shall be personally liable subject to section 49-1461.01 for any late filing fees, civil penalties, and interest that may be due under the act as a result of a failure to make such filings.

(b) For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed by his or her candidate committee under the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under either act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

(3) The committee treasurer shall record the name and address of each person from whom a contribution is received except for contributions of fifty dollars or less received pursuant to subsection (2) of section 49-1472.

(4) The records of a committee shall be preserved for five years and shall be made available for inspection as authorized by the commission.

(5) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 47; Laws 1977, LB 41, § 41; Laws 2000, LB 438, § 2; Laws 2005, LB 242, § 13.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-1449 Committee; statement of organization; filing; procedure; late filing fees.

(1) Each committee shall file a statement of organization pursuant to this section and pay a registration fee pursuant to section 49-1449.01 with the

commission. Except as provided in subsection (2) of this section, such statement of organization shall be filed and fee paid within ten days after a committee is formed. The commission shall maintain a statement of organization filed by a committee until notified of the committee's dissolution. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this subsection, not to exceed seven hundred fifty dollars.

(2) If the committee is formed within thirty days prior to an election for which the committee exists, the statement of organization shall be filed and registration fee paid within two business days after the committee is formed. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of one hundred dollars for each day the statement remains not filed in violation of this subsection, not to exceed one thousand dollars.

Source: Laws 1976, LB 987, § 49; Laws 1980, LB 535, § 7; Laws 1999, LB 416, § 5; Laws 2001, LB 242, § 3; Laws 2003, LB 349, § 1; Laws 2007, LB527, § 2.

49-1449.01 Committee; statement of organization; registration fee; failure to perfect filing; effect.

(1) At the time that each committee files its statement of organization pursuant to section 49-1449, the committee shall pay to the commission a registration fee of one hundred dollars. The filing of a statement of organization is not perfected unless accompanied by the registration fee.

(2) A committee which has not perfected its filing of a statement of organization by the date due as specified in section 49-1449 shall not make or receive contributions or expenditures until such time as the filing of the statement of organization is perfected, except that:

(a) A committee may make an expenditure to pay the registration fee; and

(b) A committee may make expenditures for thirty days after the termination of its registration if the expenditures are part of the process of dissolving the committee and the committee dissolves within thirty days after the termination of its registration.

(3) The registration fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund.

Source: Laws 2007, LB527, § 3.

49-1453 Committee; dissolution; procedure.

(1) A committee may be dissolved by the filing of a statement of dissolution with the commission, the payment of all fees, penalties, and interest which may be owed, and complying with the rules and regulations of the commission for dissolution of committees. Except as otherwise provided in subsection (2) of this section, no committee shall be dissolved until such statement is filed and such payments are made.

(2) A committee may be dissolved if the commission determines that fees, penalties, and interest owed by a committee are uncollectible.

Source: Laws 1976, LB 987, § 53; Laws 2000, LB 438, § 4; Laws 2005, LB 242, § 14.

49-1455 Committee campaign statement; contents.

(1) The campaign statement of a committee, other than a political party committee, shall contain the following information:

(a) The filing committee's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of its committee treasurer;

(b) Under the heading RECEIPTS, the total amount of contributions received during the period covered by the campaign statement; under the heading EXPENDITURES, the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for the election period. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures;

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(d) The full name of each individual from whom contributions totaling more than two hundred fifty dollars are received during the period covered by the report, together with the individual's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that individual for the election period;

(e) The full name of each person, except those individuals reported under subdivision (1)(d) of this section, which contributed a total of more than two hundred fifty dollars during the period covered by the report together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by the person for the election period;

(f) The name of each committee which is listed as a contributor shall include the full name of the committee's treasurer;

(g) Except as otherwise provided in subsection (3) of this section: The full name and street address of each person to whom expenditures totaling more than two hundred fifty dollars were made, together with the date and amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee;

(h) The amount and the date of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against that candidate or ballot question for the election period. An expenditure made in support of more than

one candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both; and

(i) The total amount of funds disbursed by a separate segregated political fund, by state, for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office, including independent expenditures made in such elections.

(2) For purposes of this section, election period means (a) the period beginning January 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for candidate committees of candidates seeking covered elective offices as defined in subdivision (1)(a) of section 32-1603, (b) the period beginning July 1 of the calendar year prior to the year of the election in which the candidate is seeking office through the end of the calendar year of such election for candidate committees of candidates seeking covered elective offices so defined in subdivision (1)(b) of section 32-1603, and (c) the calendar year of the election for all other committees.

(3) A campaign statement shall include the total amount paid to individual petition circulators during the reporting period, if any, but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

Source: Laws 1976, LB 987, § 55; Laws 1988, LB 1136, § 3; Laws 1993, LB 587, § 13; Laws 1997, LB 420, § 18; Laws 1999, LB 416, § 7; Laws 2008, LB39, § 6.
Effective date July 18, 2008.

49-1458 Late contribution; how reported; late filing fee.

(1) A committee which receives a late contribution shall report the contribution to the commission by filing a report within two days after the date of its receipt. The report may be filed by hand delivery, facsimile transmission, telegraph, express delivery service, or any other written means of communication, including electronic means approved by the commission, and need not contain an original signature.

(2) The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor, the amount of the contribution, and the date of receipt.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(4) Any committee which fails to file a report of late contributions with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late contribution which was required to be reported, not to exceed ten percent of the amount of the late contribution which was required to be reported.

(5) For purposes of this section, late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 1976, LB 987, § 58; Laws 1996, LB 1263, § 1; Laws 1999, LB 416, § 10; Laws 2000, LB 438, § 5; Laws 2005, LB 242, § 15; Laws 2007, LB434, § 1.

49-1461.01 Ballot question committee; surety bond; requirements; violations; penalty.

(1) A ballot question committee shall file with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

(2) A bond in the amount of five thousand dollars shall be filed with the commission within thirty days after the committee receives contributions or makes expenditures in excess of one hundred thousand dollars in a calendar year, and the amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

(3) Proof of any required increase in the amount of the bond shall be filed with the commission within thirty days after each additional five hundred thousand dollars is received or expended. Any failure to pay late filing fees, civil penalties, or interest due under the act shall be recovered from the proceeds of the bond prior to recovery from the treasurer of the committee.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 2000, LB 438, § 3; Laws 2005, LB 242, § 16.

49-1463 Campaign statement; statement of exemption; violations; late filing fee; civil penalty.

(1) Any person who fails to file a campaign statement with the commission under sections 49-1459 to 49-1463 shall pay to the commission a late filing fee of twenty-five dollars for each day the campaign statement remains not filed in violation of this section, not to exceed seven hundred fifty dollars. In addition, if a candidate who files an affidavit under subdivision (5)(a) of section 32-1604 fails to file a campaign statement as required by sections 49-1459 to 49-1463 within the prescribed time resulting in any abiding candidate not receiving public funds as described in subsection (6) of section 32-1604 or resulting in a delay in the receipt of such funds, the commission shall assess a civil penalty of not less than two thousand dollars and not more than three times (a) the amount of public funds the abiding candidate received after the delay or (b) the amount of public funds the abiding candidate would have received if the campaign statement had been filed within the prescribed time.

(2) Any committee which fails to file a statement of exemption with the commission under subsection (2) of section 49-1459 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement of exemption remains not filed in violation of this section, not to exceed two hundred twenty-five dollars.

Source: Laws 1976, LB 987, § 63; Laws 1980, LB 535, § 13; Laws 1998, LB 632, § 4; Laws 1999, LB 416, § 12; Laws 2006, LB 188, § 14.

49-1463.01 Late filing fee; relief; reduction or waiver; when.

(1) A person required to pay a late filing fee imposed under section 32-1604, 32-1604.01, 32-1606.01, 49-1449, 49-1458, 49-1463, 49-1467, 49-1469.08, 49-1478.01, or 49-1479.01 may apply to the commission for relief. The commis-

sion by order may reduce the amount of a late filing fee imposed and waive any or all of the interest due on the fee upon a showing by such person that (a) the circumstances indicate no intent to file late, (b) the person has not been required to pay late filing fees for two years prior to the time the filing was due, (c) the late filing shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fees and waiver of interest would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(2) A person required to pay a late filing fee imposed for failure to file a statement of exemption under subsection (2) of section 49-1459 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and waive any or all of the interest due on the fee, and the person shall not be required to make a showing as provided by subsection (1) of this section.

Source: Laws 1987, LB 480, § 7; Laws 1996, LB 1263, § 2; Laws 1997, LB 420, § 19; Laws 1998, LB 632, § 5; Laws 2000, LB 438, § 7; Laws 2001, LB 242, § 4; Laws 2005, LB 242, § 17; Laws 2006, LB 188, § 15.

49-1463.02 Late filing fees and civil penalties; interest.

Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. The interest shall begin to accrue thirty days after the commission sends notice to the person of the assessment of the late filing fee or civil penalty. A written request filed with the commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the commission grants or denies the request. The commission may waive the payment of accrued interest in the amount of twenty-five dollars or less.

Source: Laws 2000, LB 438, § 9; Laws 2007, LB527, § 4.

49-1467 Person; independent expenditure report; when filed; contents; public availability; late filing fee; violation; penalty.

(1) Any person, other than a committee, who makes an independent expenditure advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which is in an amount of more than two hundred fifty dollars, shall file a report of the independent expenditure, within ten days, with the commission.

(2) The report shall be made on an independent expenditure report form provided by the commission and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount of the expenditure, the name and address of the person to whom it was paid, the name and address of the person filing the report, and the name, address, occupation, employer, and principal place of business of each person who contributed more than two hundred fifty dollars to the expenditure.

(3) The commission shall make all independent expenditure reports available to the public on its web site as soon as practicable. An independent expenditure report shall be available on the web site for the duration of the election period for which the report is filed and for an additional six months thereafter.

(4) Any person who fails to file a report of an independent expenditure with the commission shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this section not to exceed seven hundred fifty dollars.

(5) Any person who violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1976, LB 987, § 67; Laws 1977, LB 41, § 42; Laws 1996, LB 1263, § 3; Laws 1999, LB 416, § 13; Laws 2001, LB 242, § 6; Laws 2005, LB 242, § 18.

49-1469 Businesses and organizations; contributions, expenditures, or services; report; contents; separate segregated political fund; when required.

(1) A corporation, labor organization, or industry, trade, or professional association, which is organized under the laws of the State of Nebraska or doing business in this state and which is not a committee, may:

(a) Make an expenditure;

(b) Make a contribution; and

(c) Provide personal services.

(2) Such a corporation, labor organization, or industry, trade, or professional association shall not be required to file reports of independent expenditures pursuant to section 49-1467, but if it makes a contribution or expenditure, or provides personal services, with a value of more than two hundred fifty dollars, it shall file a report with the commission within ten days after the end of the calendar month in which the contribution or expenditure is made or the personal services are provided. The report shall include:

(a) The nature, date, and value of the contribution or expenditure and the name of the candidate or committee or a description of the ballot question to or for which the contribution or expenditure was made; and

(b) A description of any personal services provided, the date the services were provided, and the name of the candidate or committee or a description of the ballot question to or for which the personal services were provided.

(3) A corporation, labor organization, or industry, trade, or professional association may not receive contributions unless it establishes and administers a separate segregated political fund which shall be utilized only in the manner set forth in sections 49-1469.05 and 49-1469.06.

Source: Laws 1976, LB 987, § 69; Laws 1977, LB 41, § 43; Laws 1980, LB 535, § 15; Laws 1983, LB 214, § 1; Laws 1988, LB 1136, § 4; Laws 1993, LB 587, § 17; Laws 1996, LB 1263, § 4; Laws 1999, LB 416, § 14; Laws 2005, LB 242, § 19.

49-1469.01 Transferred to section 49-1476.

49-1469.02 Transferred to section 49-1476.01.

49-1469.03 Transferred to section 49-1476.02.

49-1469.04 Transferred to section 49-1479.02.

49-1469.05 Businesses and organizations; separate segregated political fund; restrictions.

(1) A corporation, labor organization, or industry, trade, or professional association which establishes and administers a separate segregated political fund:

(a) Shall not make an expenditure to such fund, except that it may make expenditures and provide personal services for the establishment and administration of such separate segregated political fund; and

(b) Shall file the reports required by subsection (2) of section 49-1469 with respect to the expenditures made or personal services provided for the establishment and administration of such fund but need not file such reports for the expenditures made from such fund.

(2) If a corporation makes an expenditure to a separate segregated political fund which is established and administered by an industry, trade, or professional association of which such corporation is a member, such corporation shall not be required to file the reports required by subsection (2) of section 49-1469.

Source: Laws 2005, LB 242, § 20.

49-1469.06 Businesses and organizations; separate segregated political fund; contributions and expenditures; limitations.

(1) All contributions to and expenditures from a separate segregated political fund shall be limited to money or anything of ascertainable value obtained through the voluntary contributions of the employees, officers, directors, stockholders, or members of the corporation, including a nonprofit corporation, labor organization, or industry, trade, or professional association, and the affiliates thereof, under which such fund was established.

(2) No contribution or expenditure shall be received or made from such fund if obtained or made by using or threatening to use job discrimination or financial reprisals.

(3) Only expenditures to candidates and committees and independent expenditures may be made from a fund established by a corporation, labor organization, or industry, trade, or professional organization. Such separate segregated political fund may receive and disburse funds for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office and making independent expenditures in such elections if such receipts and disbursements are made in conformity with the solicitation provisions of this section and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund complies with the laws of the jurisdiction in which such receipts or disbursements are made.

(4) The expenses for establishment and administration of a separate segregated political fund of a corporation, labor organization, or industry, trade, or professional association may be paid from the separate segregated political fund of such corporation, labor organization, or industry, trade, or professional association.

Source: Laws 2005, LB 242, § 21.

49-1469.07 Businesses and organizations; separate segregated political fund; status.

A separate segregated political fund is hereby declared to be an independent committee and subject to all of the provisions of the Nebraska Political

Accountability and Disclosure Act applicable to independent committees, and the corporation, labor organization, or industry, trade, or professional association which establishes and administers such fund shall make the reports and filings required therefor.

Source: Laws 2005, LB 242, § 22.

49-1469.08 Businesses and organizations; late filing fee; violation; penalty.

(1) Any corporation, labor organization, or industry, trade, or professional association which fails to file a report with the commission required by section 49-1469 or 49-1469.07 shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of such sections not to exceed seven hundred fifty dollars.

(2) Any person who knowingly violates this section, section 49-1469, 49-1469.05, 49-1469.06, or 49-1469.07 shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 242, § 23.

49-1474.02 Dissemination of message by telecommunication or electronic means; requirements.

(1) Any person who makes an expenditure reportable under the Nebraska Political Accountability and Disclosure Act to disseminate by any means of telecommunication a prerecorded message or a recorded message relating to a candidate or ballot question shall include, immediately preceding the message, the name of the person making the expenditure. Such messages shall be disseminated only between the hours of 8 a.m. and 9 p.m. at the location of the person receiving the messages.

(2) Any person who makes an expenditure reportable under the act to disseminate by any means of telecommunication a message relating to a candidate or ballot question which is not a recorded message or a prerecorded message shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure. If the message is disseminated through an employee or agent of the person making the expenditure, the employee or agent shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure.

(3) Any person who makes an expenditure reportable under the act to disseminate by any electronic means, including the Internet or email, a message relating to a candidate or ballot question shall include in the message the name of the person making the expenditure.

Source: Laws 2001, LB 242, § 2; R.S.1943, (2003), § 49-1446.06; Laws 2005, LB 242, § 24; Laws 2008, LB720, § 1.
Operative date January 1, 2009.

49-1476 Lottery contractor; legislative findings.

The Legislature finds that in sponsoring a lottery, the state undertakes a unique enterprise which can succeed only if the public has confidence in the integrity of the lottery and the process by which government decisions relating to the lottery are made. The Legislature finds that there is a compelling state interest in ensuring the integrity and the appearance of integrity of elections for state elective office and of the state-sponsored lottery. The Legislature further

finds that the practice of contributions being given to candidates for state elective offices by individuals or entities holding contracts with the state to supply goods or services in connection with the state-sponsored lottery for significant monetary prizes contributes to actual corruption or the appearance of corruption and diminishes public confidence in government and in the state-sponsored lottery. The Legislature finds that sections 49-1476.01 and 49-1476.02 are consistent with these findings.

Source: Laws 1995, LB 28, § 4; R.S.1943, (2003), § 49-1469.01; Laws 2005, LB 242, § 25.

49-1476.01 Lottery contractor; contributions and expenditures prohibited; penalty.

(1) A person who is awarded a contract by the Director of the Lottery Division as a lottery contractor for a major procurement as defined in section 9-803 may not make a contribution to or an independent expenditure for a candidate for a state elective office during the term of the contract or for three years following the most recent award or renewal of the contract.

(2) A person shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in sections 49-1469 to 49-1469.08, or by anyone acting on behalf of the person, officer, or fund.

(3) A person who knowingly or intentionally violates this section shall be guilty of a Class IV felony.

Source: Laws 1995, LB 28, § 5; R.S.1943, (2003), § 49-1469.02; Laws 2005, LB 242, § 26.

49-1476.02 Lottery contractor contribution; receipt prohibited; penalty.

(1) No person, including a candidate or candidate committee, shall accept or receive any contribution prohibited by section 49-1476.01. A person who knowingly or intentionally accepts any such contribution shall be guilty of a Class III misdemeanor.

(2) Any person, including a candidate or candidate committee, who receives a contribution prohibited by section 49-1476.01 shall, upon being notified of the violation by the commission, transfer a sum equal to the amount of such contribution to a tax-exempt charitable institution.

Source: Laws 1995, LB 28, § 6; R.S.1943, (2003), § 49-1469.03; Laws 2005, LB 242, § 27.

49-1478 Expenditure; limitations; reports required; violations; penalty.

(1) An expenditure shall not be made, other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a person unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files an agent's expenditure report as provided in subsection (3) of this section. The agent or independent contractor shall make known to the committee all information required to be reported by the committee. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) An expenditure shall not be made, other than for overhead or normal operating expenses, by a person gathering petition signatures on behalf of or for the benefit of a person, including a ballot question committee, unless the expenditure is reported by the ballot question committee as if the expenditure were made directly by the committee, or unless the person gathering petition signatures files an agent's expenditure report as provided in subsection (3) of this section. The person gathering petition signatures shall make known to the committee all information required to be reported by the committee. For purposes of this section, petition signature means a signature affixed to a petition for the purpose of qualifying a ballot question to appear on a ballot. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(3) A person gathering petition signatures, an agent, or an independent contractor who is required to file an agent's report shall file a separate agent's report for each person on whose behalf an expenditure is made. An agent's report shall be filed with the commission within ten days after the end of the calendar month in which the expenditure is made. An agent's report shall include:

(a) The name, permanent address, temporary address, permanent telephone number, and temporary telephone number of the person making expenditures for the purpose of gathering signatures, the agent, or the independent contractor;

(b) The name, address, and telephone number of the person on whose behalf the expenditure is made;

(c) The name, permanent address, and temporary address of the person to whom the expenditure is made, except that if the expenditure is solely for the services of an individual circulating petitions, such individual's name and address shall not be included;

(d) The date and amount of each expenditure; and

(e) A description of the goods or services purchased and the purpose of the goods or services.

(4) A person required to report under subsection (3) of this section shall include in the report the total amount paid to individual petition circulators during the reporting period but shall not include the name, address, or telephone number of any individual petition circulator if the only payment made to such individual was for services as a petition circulator.

Source: Laws 1976, LB 987, § 78; Laws 1977, LB 41, § 51; Laws 1997, LB 49, § 9; Laws 2008, LB39, § 7.
Effective date July 18, 2008.

49-1478.01 Late independent expenditure; reports required; late filing fee.

(1) An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the commission by filing within two days after the date of the expenditure the committee's full name and street address, the amount of the expenditure, and the date of the expenditure. The report shall include (a) the full name and street address of the recipient of the expenditure, (b) the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure, and (c) the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed. Filing of a report of a late

independent expenditure may be by any written means of communication, including electronic means approved by the commission, and need not contain an original signature. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(2) A committee which fails to file a report of a late independent expenditure with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late independent expenditure which was required to be reported, not to exceed ten percent of the amount of the late independent expenditure which was required to be reported.

(3) For purposes of this section, late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 2000, LB 438, § 6; Laws 2007, LB434, § 2.

49-1479.01 Earmarked contribution; requirements; report; late filing fee; violation; penalty.

(1) Any contribution by a person made on behalf of or to a candidate or committee, including contributions which are in any way earmarked or otherwise directed to the candidate or committee through an intermediary or agent, shall be considered to be a contribution from the person to the candidate or committee.

(2) For purposes of this section, earmarked shall mean a designation, instruction, or encumbrance, including those which are direct or indirect, express or implied, or oral or written, which results in any part of a contribution or expenditure, including any in-kind expenditure made in exchange for a contribution, being made to or expended on behalf of a candidate or a committee.

(3) Any intermediary or agent, other than a committee, which receives an earmarked contribution shall forward the earmarked contribution to the recipient candidate or committee within ten days after receipt of such contribution.

(4) An intermediary or agent which is not a committee shall file a report of the earmarked contribution with the commission within ten days after receipt of the contribution. Any committee which is an intermediary or agent shall file a report of the earmarked contribution with the commission by the date the next campaign statement is required to be filed. The report of the earmarked contribution filed pursuant to this section shall be on a form prescribed by the commission.

(5) Any intermediary or agent making an earmarked contribution shall disclose to the recipient of the earmarked contribution the name and address of the intermediary or agent and the actual source of the contribution by providing the recipient with a copy of the report of the earmarked contribution at the time that the earmarked contribution is made.

(6) Any person or committee which fails to file a report of an earmarked contribution with the commission as required by this section shall pay to the commission a late filing fee of twenty-five dollars for each day the statement

remains not filed in violation of this section not to exceed seven hundred fifty dollars.

(7) Any person who knowingly violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1987, LB 480, § 5; Laws 1996, LB 1263, § 5; Laws 1999, LB 416, § 16; Laws 2005, LB 242, § 28.

49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee.

(1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

Source: Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3.

(c) LOBBYING PRACTICES

49-1480.01 Application for registration; fee; collection; registration renewal.

(1) The Clerk of the Legislature shall collect a fee of two hundred dollars for an application for registration by a lobbyist for each principal if the lobbyist receives or will receive compensation for such lobbying. Except as provided by section 49-1434, a lobbyist who receives compensation shall include an individ-

ual who is an employee or member of a principal whose duties of employment, office, or membership include engaging in lobbying activities.

(2) A fee of fifteen dollars shall be collected for an application by a lobbyist for each principal if the lobbyist is not receiving and will not be receiving compensation for such lobbying. Any lobbyist who receives compensation who did not anticipate receiving such compensation at the time of application for registration shall, within five days of the receipt of any compensation, file an amended registration form which shall be accompanied by an additional fee of one hundred eighty-five dollars for such year.

(3) The registration of a lobbyist for each of his or her principals may be renewed by the payment of a fee as provided by subsections (1) and (2) of this section. Such fee shall be paid to the Clerk of the Legislature on or before December 31 of each calendar year. The registration of a lobbyist for each of his or her principals shall terminate as of the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided in this section.

Source: Laws 1994, LB 872, § 2; Laws 1994, LB 1243, § 3; Laws 2005, LB 242, § 30.

49-1481 List of registered lobbyists and principals; print in Legislative Journal; additional information; when.

(1) On the fourth legislative day of each legislative session, the Clerk of the Legislature shall insert the following in the Legislative Journal:

(a) A list of the names of all lobbyists whose registration is then in effect;

(b) The name of the principal in whose behalf the lobbyist is registered; and

(c) Any additional information as directed by the Legislature.

(2) On the last legislative day of each week after the fourth legislative day, the clerk shall cause to be inserted in the Legislative Journal the names of any additional lobbyists and principals who have registered or who have changed their registration.

Source: Laws 1976, LB 987, § 81; Laws 2005, LB 242, § 31.

49-1482 Lobbyists and principals; registration fees; disbursement.

The Clerk of the Legislature shall charge a fee pursuant to section 49-1480.01 for each application for registration by a lobbyist for each principal. Such fees when collected shall be remitted to the State Treasurer. Three-fourths of such fees shall be credited to the Nebraska Accountability and Disclosure Commission Cash Fund and one-fourth to the Clerk of the Legislature Cash Fund.

Source: Laws 1976, LB 987, § 82; Laws 1977, LB 4, § 1; Laws 1982, LB 928, § 41; Laws 1994, LB 872, § 3; Laws 1994, LB 1243, § 4; Laws 2005, LB 242, § 32.

49-1483 Lobbyist and principal; file separate statements; when; contents.

(1) Every lobbyist who is registered or required to be registered shall, for each of his or her principals, file a separate statement for each calendar quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter. Every principal employing a lobbyist who is registered or required to be registered shall file a separate statement for each calendar

quarter with the Clerk of the Legislature within thirty days after the end of each calendar quarter.

(2) Each statement shall show the following:

(a) The total amount received or expended directly or indirectly for the purpose of carrying on lobbying activities, with the following categories of expenses each being separately itemized: (i) Miscellaneous expenses; (ii) entertainment, including expenses for food and drink as provided in subdivision (3)(a) of this section; (iii) lodging expenses; (iv) travel expenses; (v) lobbyist compensation, except that when a principal retains the services of a person who has only part-time lobbying duties, only the compensation paid which is reasonably attributable to influencing legislative action need be reported; (vi) lobbyist expense reimbursement; (vii) admissions to a state-owned facility or a state-sponsored industry or event as provided in subdivision (3)(a) of this section; and (viii) extraordinary office expenses directly related to the practice of lobbying;

(b) A detailed statement of any money which is loaned, promised, or paid by a lobbyist, a principal, or anyone acting on behalf of either to an official in the executive or legislative branch or member of such official's staff. The detailed statement shall identify the recipient and the amount and the terms of the loan, promise, or payment; and

(c) The total amount expended for gifts, other than admissions to a state-owned facility or a state-sponsored industry or event, as provided in subdivision (3)(a) of this section.

(3)(a) Each statement shall disclose the aggregate expenses for entertainment, admissions, and gifts for each of the following categories of elected officials: Members of the Legislature; and officials in the executive branch of the state. Such disclosures shall be in addition to the entertainment expenses reported under subdivision (2)(a)(ii) of this section, admissions reported under subdivision (2)(a)(vii) of this section, and gifts reported under subdivision (2)(c) of this section.

(b) For purposes of reporting aggregate expenses for entertainment for members of the Legislature and officials in the executive branch of the state as required by subdivision (3)(a) of this section, the reported amount shall include the actual amounts attributable to entertaining members of the Legislature and officials in the executive branch of the state. When the nature of an event at which members of the Legislature are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of members of the Legislature in attendance. When the nature of an event at which officials in the executive branch of the state are entertained makes it impractical to determine the actual cost, the cost of entertainment shall be the average cost per person multiplied by the number of officials in the executive branch of the state in attendance. For purposes of this subdivision, the average cost per person means the cost of the event divided by the number of persons expected to attend the event.

(4) The lobbyist shall also file any changes or corrections to the information set forth in the registration required pursuant to section 49-1480 so as to reflect the correctness of such information as of the end of each calendar quarter for which such statement is required by this section.

(5) If a lobbyist does not expect to receive lobbying receipts from or does not expect to make lobbying expenditures for a principal, the quarterly statements

required by this section as to such principal need not be filed by the lobbyist if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A lobbyist exempt from filing quarterly statements pursuant to this section shall (a) file a statement of activity pursuant to section 49-1488 and (b) resume or commence filing quarterly statements with regard to such principal starting with the quarterly period the lobbyist receives lobbying receipts or makes lobbying expenditures for such principal.

(6) If a principal does not expect to receive lobbying receipts or does not expect to make lobbying expenditures, the quarterly statements required pursuant to this section need not be filed by the principal if the principal and lobbyist both certify such facts in writing to the Clerk of the Legislature. A principal exempt from filing quarterly statements pursuant to this section shall commence or resume filing quarterly statements starting with the quarterly period the principal receives lobbying receipts or makes lobbying expenditures.

(7) A principal shall report the name and address of every person from whom it has received more than one hundred dollars in any one month for lobbying purposes.

(8) For purposes of sections 49-1480 to 49-1492.01, calendar quarter shall mean the first day of January through the thirty-first day of March, the first day of April through the thirtieth day of June, the first day of July through the thirtieth day of September, and the first day of October through the thirty-first day of December.

Source: Laws 1976, LB 987, § 83; Laws 1979, LB 162, § 4; Laws 1983, LB 479, § 2; Laws 1991, LB 232, § 4; Laws 1994, LB 872, § 4; Laws 1994, LB 1243, § 5; Laws 2000, LB 1021, § 5; Laws 2001, LB 242, § 8; Laws 2005, LB 242, § 33.

49-1483.01 Repealed. Laws 2005, LB 242, § 70.

49-1483.03 Lobbyist or principal; special report required; when; late filing fee.

(1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall, within fifteen days after the end of such calendar month, file a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

Source: Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4.

49-1486 Registration of lobbyists; period valid.

The registration of a lobbyist shall be valid for a period commencing with the filing of any registration as required by section 49-1480 and ending at the end of the calendar year for which the lobbyist registered unless the registration is renewed as provided by section 49-1480.01 or the registration is terminated prior to the end of the calendar year in the manner prescribed by rules and regulations adopted and promulgated by the commission.

Source: Laws 1976, LB 987, § 86; Laws 1977, LB 4, § 2; Laws 1994, LB 872, § 9; Laws 1994, LB 1243, § 10; Laws 2005, LB 242, § 34.

49-1488.01 Statements; late filing fee; reduction or waiver; when.

(1) Every lobbyist who fails to file a quarterly statement or a statement of activity with the Clerk of the Legislature, pursuant to sections 49-1483 and 49-1488, shall pay to the commission a late filing fee of twenty-five dollars for each day any of such statements are not filed in violation of such sections but not to exceed seven hundred fifty dollars per statement.

(2) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section may apply to the commission for relief. The commission by order may reduce the amount of the late filing fee imposed upon such lobbyist if he or she shows the commission that (a) the circumstances indicate no intent to file late, (b) the lobbyist has not been required to pay a late filing fee for two years prior to the time the filing of the statement was due, (c) the late filing of the statement shows that less than five thousand dollars was raised, received, or expended during the reporting period, and (d) a reduction of the late fee would not frustrate the purposes of the Nebraska Political Accountability and Disclosure Act.

(3) A lobbyist required to pay a late filing fee pursuant to subsection (1) of this section who qualifies for an exemption to the filing of quarterly statements pursuant to subsection (5) of section 49-1483 may apply to the commission for relief. The commission by order may reduce or waive the late filing fee and the person shall not be required to make a showing as provided by subsection (2) of this section.

Source: Laws 1991, LB 232, § 7; Laws 1994, LB 872, § 11; Laws 1994, LB 1243, § 12; Laws 1998, LB 632, § 6; Laws 1999, LB 416, § 18; Laws 2005, LB 242, § 35.

(d) CONFLICTS OF INTEREST

49-1494 Candidates for elective office; statement of financial interest; filing; time; where; effect; supplementary statements.

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall:

(a) File a statement of financial interests for the preceding calendar year at the same time and with the same official with whom the individual files for office; and

(b) File a copy of the statement with the commission within five days after filing for office.

(2) Candidates for the elective offices specified in section 49-1493 who qualify other than by filing shall file a statement for the preceding calendar year with

the commission within fifteen days after becoming a candidate or being appointed to that elective office.

(3) A filing to appear on the ballot shall not be accepted by a filing official unless a statement is properly filed.

(4) A statement of financial interests shall be preserved for a period of not less than five years by the commission and not less than eighteen months by the officials other than the commission with whom it is filed.

(5) This section does not apply to a person who has already filed a statement for the preceding calendar year.

(6) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election prior to January 1 of the year in which the election is held, the candidate shall file supplementary statements with the appropriate filing officials on or before April 1 of the year in which the election is held covering the preceding calendar year.

Source: Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36.

49-1496 Statement of financial interests; form; contents; enumerated.

(1) The statement of financial interests filed pursuant to sections 49-1493 to 49-14,104 shall be on a form prescribed by the commission.

(2) Individuals required to file under sections 49-1493 to 49-1495 shall file the following information for themselves:

(a) The name and address of and the nature of association with any business with which the individual was associated;

(b) The name and address of any entity in which a position of trustee was held;

(c) The name, address, and nature of business of a person or government body from whom any income in the value of one thousand dollars or more was received and the nature of the services rendered, except that the identification of patrons, customers, patients, or clients of such person from which employment income was received is not required;

(d) A description, but not the value, of the following, if the fair market value thereof exceeded one thousand dollars:

(i) The nature and location of all real property in the state, except the residence of the individual;

(ii) The depository of checking and savings accounts;

(iii) The issuer of stocks, bonds, and government securities; and

(iv) A description of all other property owned or held for the production of income, except property owned or used by a business with which the individual was associated;

(e) The name and address of each creditor to whom the value of one thousand dollars or more was owed or guaranteed by the individual or a member of the individual's immediate family, except for the following:

(i) Accounts payable;

(ii) Debts arising out of retail installment transactions;

(iii) Loans made by financial institutions in the ordinary course of business;

(iv) Loans from a relative; and

(v) Land contracts that have been properly recorded with the county clerk or the register of deeds;

(f) The name, address, and occupation or nature of business of any person from whom a gift in the value of more than one hundred dollars was received, a description of the gift and the circumstances of the gift, and the monetary value category of the gift, based on a good faith estimate by the individual, reported in the following categories:

(i) $100.01 - $200;

(ii) $200.01 - $500;

(iii) $500.01 - $1,000; and

(iv) $1,000.01 or more; and

(g) Such other information as the individual or the commission deems necessary, after notice and hearing, to carry out the purposes of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 96; Laws 1980, LB 535, § 17; Laws 1993, LB 121, § 307; Laws 2000, LB 1021, § 8; Laws 2005, LB 242, § 37.

49-1497 Financial institution, defined; irrevocable trust; how treated.

(1) For purposes of section 49-1496, financial institution means:

(a) A bank or banking corporation as defined in section 8-101;

(b) A federal bank or branch bank;

(c) An insurance company providing a loan on an insurance policy;

(d) A small loan company;

(e) A state or federal savings and loan association or credit union; or

(f) The federal government or any political subdivision thereof.

(2) The res or the income of an irrevocable trust of a member of the individual's immediate family is not required to be reported pursuant to section 49-1496.

Source: Laws 1976, LB 987, § 97; Laws 2005, LB 242, § 38.

49-1499 Legislature; discharge of official duties; potential conflict; actions required.

(1) A member of the Legislature 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:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict, and if he or she will not abstain from voting, deliberating, or taking other action on the matter, the statement shall state why, despite the potential conflict, he or she intends to vote or otherwise participate; and

(b) Deliver a copy of the statement to the commission and to the Speaker of the Legislature who shall cause the statement to be filed with the Clerk of the Legislature to be held as a matter of public record.

(2) Nothing in this section shall prohibit any member of the Legislature from voting, deliberating, or taking other action on any matter that comes before the Legislature.

(3) The member of the Legislature may abstain from voting, deliberating, or taking other action on the matter on which the potential conflict exists. He or she may have the reasons for the abstention recorded in the Legislative Journal.

Source: Laws 1976, LB 987, § 99; Laws 1981, LB 134, § 8; Laws 1992, LB 556, § 11; Laws 1995, LB 434, § 9; Laws 2001, LB 242, § 12; Laws 2005, LB 242, § 39.

49-1499.01 Executive branch; employment of family member; when; exception; violation; penalty.

(1) An official or employee of the executive branch of state government shall not employ or recommend or supervise the employment of an immediate family member in state government.

(2) This section does not apply to an immediate family member of an official or employee of the executive branch of state government who (a) was previously employed in a position subject to this section prior to the election or appointment of the official or employee or (b) was employed in a position subject to this section prior to September 1, 2001.

(3) Prior to, upon, or as soon as reasonably possible after the official date of taking office, a newly elected or appointed official or employee in the executive branch of state government shall make a full disclosure of any immediate family member employed in a position subject to subdivision (2)(a) or (b) of this section.

(4) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1986, LB 548, § 1; Laws 2001, LB 242, § 15; Laws 2005, LB 242, § 40.

Cross References

For restrictions on state department heads and employees, see section 81-108.

49-1499.02 Executive branch; discharge of official duties; potential conflict; actions required.

(1) An official or employee of the executive branch of state government 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:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee 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.

(2) This section does not prevent such a person from (a) 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 or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

(3) For purposes of this section, commodity board means only the following:

(a) Corn Development, Utilization, and Marketing Board;

(b) Nebraska Dairy Industry Development Board;

(c) Grain Sorghum Development, Utilization, and Marketing Board;

(d) Nebraska Wheat Development, Utilization, and Marketing Board;

(e) Dry Bean Commission;

(f) Nebraska Potato Development Committee; and

(g) Nebraska Poultry and Egg Development, Utilization, and Marketing Committee.

Source: Laws 2001, LB 242, § 13; Laws 2005, LB 242, § 41.

49-1499.03 Political subdivision personnel; school board; discharge of official duties; potential conflict; actions required.

(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) 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) 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 49-1499.01 or 49-1499.04.

Source: Laws 2001, LB 242, § 14; Laws 2005, LB 242, § 42.

49-1499.04 Political subdivision; employment of family member; when; exception.

(1) An official or employee of a political subdivision may employ or recommend or supervise the employment of an immediate family member if (a) he or she does not abuse his or her official position as described in section 49-1499.05, (b) he or she makes a full disclosure on the record to the governing body of the political subdivision and a written disclosure to the person in charge of keeping records for the governing body, and (c) the governing body of the political subdivision approves the employment or supervisory position.

(2) No official or employee shall employ an immediate family member (a) without first having made a reasonable solicitation and consideration of applications for such employment, (b) who is not qualified for and able to perform the duties of the position, (c) for any unreasonably high salary, or (d) who is not required to perform the duties of the position.

(3) No official or employee of a political subdivision shall terminate the employment of another employee so as to make funds or a position available for the purpose of hiring an immediate family member.

(4) This section does not apply to an immediate family member of an official or employee who (a) was previously employed in a position subject to this section prior to the election or appointment of the official or employee or (b) was employed in a position subject to provisions similar to this section prior to September 1, 2001.

(5) Prior to, upon, or as soon as reasonably possible after the official date of taking office, a newly elected or appointed official or employee shall make a full

disclosure of any immediate family member employed in a position subject to subdivision (4)(a) or (b) of this section.

Source: Laws 2001, LB 242, § 16; Laws 2005, LB 242, § 43.

49-14,101.01 Financial gain; gift of travel or lodging; prohibited acts; violation; penalty.

(1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.

(2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

(3) A public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(4) A member of the immediate family of a public official shall not accept a gift of travel or lodging or a gift of reimbursement for travel or lodging if the gift is made so that a member of the public official's immediate family can accompany the public official in the performance of his or her official duties.

(5) This section does not prohibit the Executive Board of the Legislative Council from adopting policies that allow a member of the Legislature to install and use with private funds a telephone line, telephone, and telefax machine in his or her public office for private purposes.

(6) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

Source: Laws 2001, LB 242, § 19; Laws 2002, LB 1086, § 4; Laws 2005, LB 242, § 44.

49-14,101.02 Public official or public employee; use of public resources or funds; prohibited acts; exceptions.

(1) For purposes of this section, public resources means personnel, property, resources, or funds under the official care and control of a public official or public employee.

(2) Except as otherwise provided in this section, a public official or public employee shall not use or authorize the use of public resources for the purpose of campaigning for or against the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

(3) This section does not prohibit a public official or public employee from making government facilities available to a person for campaign purposes if the identity of the candidate or the support for or opposition to the ballot question is not a factor in making the government facility available or a factor in determining the cost or conditions of use.

(4) This section does not prohibit a governing body from discussing and voting upon a resolution supporting or opposing a ballot question or a public corporation organized under Chapter 70 from otherwise supporting or opposing a ballot question concerning the sale or purchase of its assets.

(5) This section does not prohibit a public official from responding to specific inquiries by the press or the public as to his or her opinion regarding a ballot question or from providing information in response to a request for information.

(6) This section does not prohibit a member of the Legislature from making use of public resources in expressing his or her opinion regarding a candidate or a ballot question or from communicating that opinion. A member is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of campaigning for or against the nomination or election of a candidate. A member is not authorized by this section to utilize mass mailings at public expense for the purpose of qualifying, supporting, or opposing a ballot question.

(7) Nothing in this section prohibits a public official from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used.

(8) Nothing in this section prohibits a public employee from campaigning for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate when no public resources are used. Except as otherwise provided in this section, a public employee shall not engage in campaign activity for or against the qualification, passage, or defeat of a ballot question or the nomination or election of a candidate while on government work time or when otherwise engaged in his or her official duties.

(9) This section does not prohibit an employee of the Legislature from using public resources consistent with this section for the purpose of researching or campaigning for or against the qualification, passage, or defeat of a ballot question if the employee is under the direction and supervision of a member of the Legislature.

Source: Laws 2001, LB 242, § 20; Laws 2005, LB 242, § 45.

49-14,102 Contracts with government bodies; procedure; purpose.

(1) Except as otherwise provided by law, no public official or public employee, a member of that individual's immediate family, or business with which the individual is associated shall enter into a contract valued at two thousand dollars or more, in any one year, with a government body unless the contract is awarded through an open and public process.

(2) For purposes of this section, an open and public process includes prior public notice and subsequent availability for public inspection during the regular office hours of the contracting government body of the proposals considered and the contract awarded.

(3) No contract may be divided for the purpose of evading the requirements of this section.

(4) This section shall not apply to a contract when the public official or public employee does not in any way represent either party in the transaction.

(5) This section prohibits public officials and public employees from engaging in certain activities under circumstances creating a substantial conflict of

interest. This section is not intended to penalize innocent persons, and a contract shall not be absolutely void by reason of this section.

Source: Laws 1976, LB 987, § 102; Laws 2005, LB 242, § 46.

49-14,103 Contract; conflict of interest; voidable; decree.

(1) A contract involving a prohibited conflict of interest under section 49-14,102 shall be voidable only by decree of a court of proper jurisdiction in an action brought by any citizen of this state as to any person that entered into the contract or took assignment thereof, with actual knowledge of the prohibited conflict. In the case of a person other than an individual, the actual knowledge must be that of an individual or body finally approving the contract for the person.

(2) An action to void any contract shall be brought within one year after discovery of circumstances suggesting the existence of a violation.

(3) Any such decree voiding such contract may, to meet the ends of justice, provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the state or political subdivision has benefited thereby.

(4) Sections 49-14,102 and 49-14,103 shall not apply to a contract for labor which is negotiated or is being negotiated pursuant to the laws of this state.

Source: Laws 1976, LB 987, § 103; Laws 2005, LB 242, § 47.

49-14,103.01 Officer, defined; interest in contract prohibited; when.

(1) For purposes of sections 49-14,103.01 to 49-14,103.06, unless the context otherwise requires, officer means (a) a member of the board of directors of a natural resources district, (b) a member of any board or commission of any county, school district, city, or village which spends and administers its own funds, who is dealing with a contract made by such board or commission, (c) any elected county, school district, educational service unit, city, or village official, and (d) a member of any board of directors or trustees of a hospital district as provided by the Nebraska Local Hospital District Act or a county hospital as provided by sections 23-3501 to 23-3519. Officer does not mean volunteer firefighters or ambulance drivers with respect to their duties as firefighters or ambulance drivers.

(2) Except as provided in section 49-1499.04 or 70-624.04, no officer may have an interest in any contract to which his or her governing body, or anyone for its benefit, is a party. The existence of such an interest in any contract shall render the contract voidable by decree of a court of competent jurisdiction as to any person who entered into the contract or took assignment of such contract with actual knowledge of the prohibited conflict.

(3) An action to have a contract declared void under this section may be brought by the county attorney, the governing body, or any resident within the jurisdiction of the governing body and shall be brought within one year after the contract is signed or assigned. The decree may provide for the reimbursement of any person for the reasonable value of all money, goods, material, labor, or services furnished under the contract, to the extent that the governing body has benefited thereby.

(4) The prohibition in this section shall apply only when the officer or his or her parent, spouse, or child (a) has a business association as defined in section

49-1408 with the business involved in the contract or (b) will receive a direct pecuniary fee or commission as a result of the contract.

(5) The prohibition in this section does not apply if the contract is an agenda item approved at a board meeting and the interested officer:

(a) Makes a declaration on the record to the governing body responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;

(b) Does not vote on the matters of granting the contract, making payments pursuant to the contract, or accepting performance of work under the contract, or similar matters relating to the contract, except that if the number of members of the governing body declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matters; and

(c) Does not act for the governing body which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

(6) An officer who (a) has no business association as defined in section 49-1408 with the business involved in the contract or (b) will not receive a direct pecuniary fee or commission as a result of the contract shall not be deemed to have an interest within the meaning of this section.

(7) The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of any such governing body by a financial institution shall not be considered a contract for purposes of this section. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section.

(8) If an officer's parent, spouse, or child is an employee of his or her governing body, the officer may vote on all issues of the contract which are generally applicable to (a) all employees or (b) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

(9) Section 49-14,102 does not apply to contracts covered by sections 49-14,103.01 to 49-14,103.06.

(10)(a) This section does not prohibit a director of a natural resources district from acting as a participant in any of the conservation or other general district programs which are available for like participation to other residents and landowners of the district or from granting, selling, or otherwise transferring to such district any interest in real property necessary for the exercise of its powers and authorities if the cost of acquisition thereof is equal to or less than that established by a board of three credentialed real property appraisers or by a court of competent jurisdiction in an eminent domain proceeding.

(b) District payments to a director of a natural resources district of the market value for real property owned by him or her and needed for district projects, or for cost sharing for conservation work on such director's land or land in which a director may have an interest, shall not be deemed subject to this section.

Source: Laws 1986, LB 548, § 2; Laws 1987, LB 134, § 8; Laws 1987, LB 688, § 10; Laws 1990, LB 1153, § 55; Laws 1991, LB 203, § 2; Laws 1994, LB 1107, § 2; Laws 2001, LB 242, § 21; Laws 2005, LB 242, § 48; Laws 2006, LB 778, § 5.

Cross References

Nebraska Local Hospital District Act, see section 23-3528.

49-14,103.02 Contract with officer; information required; ledger maintained.

(1) The person charged with keeping records for each governing body shall maintain separately from other records a ledger containing the information listed in subdivisions (1)(a) through (e) of this section about every contract entered into by the governing body in which an officer of the body has an interest and for which disclosure is made pursuant to section 49-14,103.01. Such information shall be kept in the ledger for five years from the date of the officer's last day in office and shall include the:

(a) Names of the contracting parties;

(b) Nature of the interest of the officer in question;

(c) Date that the contract was approved by the governing body;

(d) Amount of the contract; and

(e) Basic terms of the contract.

(2) The information supplied relative to the contract shall be provided no later than ten days after the contract has been signed by both parties. The ledger kept pursuant to this section shall be available for public inspection during the normal working hours of the office in which it is kept.

Source: Laws 1986, LB 548, § 3; Laws 2001, LB 242, § 22; Laws 2005, LB 242, § 49.

49-14,103.03 Open account with officer; how treated.

(1) An open account established for the benefit of any governing body with a business in which an officer has an interest shall be deemed a contract subject to sections 49-14,103.01 to 49-14,103.06.

(2) The statement required to be filed by section 49-14,103.02 shall be filed within ten days after such account is opened. Thereafter, the person charged with keeping records for such governing body shall maintain a running account of amounts purchased on the open account.

(3) Purchases made from petty cash or a petty cash fund shall not be subject to sections 49-14,103.01 to 49-14,103.06.

Source: Laws 1986, LB 548, § 4; Laws 2005, LB 242, § 50.

49-14,103.04 Violations; penalties.

(1) Any officer who knowingly violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class III misdemeanor.

(2) Any officer who negligently violates sections 49-14,103.01 to 49-14,103.03 shall be guilty of a Class V misdemeanor.

Source: Laws 1986, LB 548, § 5; Laws 2005, LB 242, § 51.

49-14,104 Official or full-time employee of executive branch; not to represent a person or act as an expert witness; when; violation; penalty.

(1) An official or full-time employee of the executive branch of state government shall not represent a person or act as an expert witness for compensation before a government body when the action or nonaction of the government

body is of a nonministerial nature, except in a matter of public record in a court of law.

(2) This prohibition shall not apply to an official or employee acting in an official capacity.

(3) Any person violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 104; Laws 1977, LB 41, § 56; Laws 2005, LB 242, § 52.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,112 Commission; members; vacancy; how filled.

(1) When a vacancy occurs by expiration of a term of office or otherwise, which vacancy is subject to an appointment from a list pursuant to the provisions of section 49-14,105, such list shall be submitted to the Governor or the Secretary of State not later than thirty days after such vacancy occurs.

(2) If the appointment is subject to a list pursuant to subdivision (1)(a) of section 49-14,105, and the Legislature is not in session, such list may be submitted by the Executive Board of the Legislative Council.

(3) The Governor or the Secretary of State shall make his or her appointment within thirty days of receiving the list provided for in section 49-14,105 unless two or more of the individuals whose names appear on the list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. If such individuals are unwilling to so withdraw or resign, the Governor or the Secretary of State shall notify the provider of the list. Within thirty days after such notification is received, a new list of names of at least five individuals shall be submitted to the Governor or Secretary of State. Such new list shall not include the individuals included in the initial list who were unwilling to withdraw from activities or resign from positions as required by section 49-14,114.

(4) The Governor or Secretary of State shall appoint an individual from the new list within thirty days of receipt unless two or more of the individuals whose names appear on the second list are unwilling to withdraw from activities or resign from positions as required by section 49-14,114. In such event, the Governor or Secretary of State shall appoint an individual of his or her own choosing within thirty days after the receipt of the new list.

(5) If the Governor or Secretary of State does not receive the initial list within thirty days of a vacancy, the Governor or Secretary of State may make an appointment of his or her own choosing. If the Governor or Secretary of State does not receive the second list within thirty days after notification to the provider of the list, the Governor or Secretary of State may make an appointment of his or her own choosing.

(6) All appointments of the Governor or Secretary of State shall be subject to sections 49-14,106 and 49-14,110 and subsection (2) of section 49-14,111.

(7) No individual appointed to the commission shall serve more than one full six-year term on the commission.

Source: Laws 1976, LB 987, § 112; Laws 1979, LB 54, § 6; Laws 1990, LB 534, § 6; Laws 2005, LB 242, § 53.

49-14,115 Member or employee of commission; confidential information; disclosure, when; violation; penalty.

No member or employee of the commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential by the Nebraska Political Accountability and Disclosure Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the act. Any member who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 987, § 115; Laws 1977, LB 41, § 57; Laws 2005, LB 242, § 54.

49-14,120 Commission; members; compensation.

The Secretary of State shall receive no compensation for services as a commission member other than any salary allowed by law, but shall be reimbursed for actual and necessary expenses. The appointed members shall be paid a per diem of fifty dollars for each day actually and necessarily engaged in the performance of their duties as members of such commission in addition to such expense allowance. Reimbursement for expenses shall be as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 987, § 120; Laws 1981, LB 204, § 88; Laws 2005, LB 242, § 55.

49-14,123 Commission; duties.

In addition to any other duties prescribed by law, the commission shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the acts upon the request of a person or government body directly covered or affected by the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations promulgated thereunder and act as the primary civil enforcement agency for violations of the Campaign Finance Limitation Act and the rules or regulations promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, seek the return of any amount as provided in section 32-1606, and seek the repayment of any amount as provided in section 32-1607 and remit all such funds to the State Treasurer for credit to the Campaign Finance Limitation Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 545, § 13; Laws 1981, LB 134, § 9; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3.

Cross References

Administrative Procedure Act, see section 84-920.
Campaign Finance Limitation Act, see section 32-1601.

49-14,123.02 Repealed. Laws 2005, LB 242, § 70.

49-14,124 Alleged violation; preliminary investigation by commission; powers; notice.

(1) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Nebraska Political Accountability and Disclosure Act, or any rule or regulation adopted and promulgated thereunder, upon:

(a) The receipt of a complaint signed under oath which contains at least a reasonable belief that a violation has occurred;

(b) The recommendation of the executive director; or

(c) The commission's own motion.

(2) The commission shall, by way of preliminary investigation, investigate any alleged violation of the Campaign Finance Limitation Act, or any rule or regulation promulgated thereunder, upon:

(a) The recommendation of the executive director; or

(b) The commission's own motion.

(3) For purposes of conducting preliminary investigations under either the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, the commission shall have the powers possessed by the courts of this state to issue subpoenas, and the district court shall have jurisdiction to enforce such subpoenas.

(4) The executive director shall notify any person under investigation by the commission of the investigation and of the nature of the alleged violation within five days after the commencement of the investigation.

(5) Within fifteen days after the filing of a sworn complaint by a person alleging a violation, and every thirty days thereafter until the matter is terminated, the executive director shall notify the complainant and the alleged violator of the action taken to date by the commission together with the reasons for such action or for nonaction.

(6) Each governing body shall cooperate with the commission in the conduct of its investigations.

Source: Laws 1976, LB 987, § 124; Laws 1997, LB 49, § 10; Laws 1997, LB 420, § 21; Laws 1999, LB 578, § 1; Laws 2005, LB 242, § 57; Laws 2006, LB 188, § 16.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,124.01 Preliminary investigation; confidential; exception.

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act requests that the proceedings be public. If the commission determines that there was no violation of either act or any rule or regulation adopted and promulgated under either act, the records and actions relative to the investigation and determination shall remain confidential unless the alleged violator requests that the records and actions be made public. If the commission determines that there was a violation, the records and actions shall be made public as soon as practicable after the determination is made.

Source: Laws 2005, LB 242, § 58.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.

At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney

General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

Source: Laws 2007, LB464, § 4.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,125 Preliminary investigation; terminated, when; violation; effect; powers of commission; subsequent proceedings; records.

(1) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is no probable cause for belief that a person has violated the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or any rule or regulation adopted and promulgated thereunder or if the commission determines that there is insufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall terminate the investigation and so notify the complainant and the person who had been under investigation.

(2) If, after a preliminary investigation, it is determined by a majority vote of the commission that there is probable cause for belief that the Nebraska Political Accountability and Disclosure Act or the Campaign Finance Limitation Act or a rule or regulation adopted and promulgated thereunder has been violated and if the commission determines that there is sufficient evidence to reasonably believe that the person could be found to have violated either act, the commission shall initiate appropriate proceedings to determine whether there has in fact been a violation. The commission may appoint a hearing officer to preside over the proceedings.

(3) All proceedings of the commission pursuant to this section shall be by closed session attended only by those persons necessary to the investigation of the alleged violation, unless the person alleged to be in violation of either act or any rule or regulation adopted and promulgated thereunder requests an open session.

(4) The commission shall have the powers possessed by the courts of this state to issue subpoenas in connection with proceedings under this section, and the district court shall have jurisdiction to enforce such subpoenas.

(5) All testimony shall be under oath which shall be administered by a member of the commission, the hearing officer, or any other person authorized by law to administer oaths and affirmations.

(6) Any person who appears before the commission shall have all of the due process rights, privileges, and responsibilities of a witness appearing before the courts of this state.

(7) All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the district court.

(8) Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby shall be notified and may appear personally before the commission on that person's own behalf or file a written statement for incorporation into the record of the proceeding.

(9) The commission shall cause a record to be made of all proceedings pursuant to this section.

(10) At the conclusion of proceedings concerning an alleged violation, the commission shall deliberate on the evidence and determine whether there has been a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 125; Laws 1981, LB 134, § 10; Laws 1997, LB 420, § 22; Laws 1999, LB 578, § 2; Laws 2005, LB 242, § 59; Laws 2006, LB 188, § 17.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,126 Commission; violation; orders; civil penalty.

(1) 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:

(a) Cease and desist violation;

(b) File any report, statement, or other information as required; or

(c) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation.

(2) If the commission finds a violation of the Campaign Finance Limitation Act, the commission shall assess a civil penalty as required under section 32-1604, 32-1606.01, or 32-1612.

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.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,127 Mandamus to compel civil action; when.

Any individual who believes that a violation of the Nebraska Political Accountability and Disclosure Act has occurred may, after exhausting the administrative remedies provided by the act, bring a civil action to compel the commission to fulfill its responsibilities under the act, or may bring a civil action against any person or persons to compel compliance with the act.

Source: Laws 1976, LB 987, § 127; Laws 2005, LB 242, § 60.

49-14,130 Repealed. Laws 2005, LB 242, § 70.

49-14,132 Filings; limitation of use.

Information copied from campaign statements, registration forms, activity reports, statements of financial interest, and other filings required by the Nebraska Political Accountability and Disclosure Act shall not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that (1) the name and address of any political committee, corporation, labor organization, or industry, trade, or professional association may be used for soliciting contributions from such committee, corporation,

organization, or association and (2) the use of information copied or otherwise obtained from statements, forms, reports, and other filings required by the act in newspapers, magazines, books, or other similar communications is permissible as long as the principal purpose of using such information is not to communicate any contributor information listed thereon for the purpose of soliciting contributions or for other commercial purposes.

Source: Laws 1976, LB 987, § 132; Laws 1981, LB 134, § 12; Laws 2005, LB 242, § 61.

49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.

The Attorney General has jurisdiction to enforce the criminal provisions of the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act occurs shall have concurrent jurisdiction.

Source: Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6.

Cross References

Campaign Finance Limitation Act, see section 32-1601.

49-14,135 Violation of confidentiality; perjury; penalty.

(1) Except as otherwise provided in the Nebraska Political Accountability and Disclosure Act, any person who violates the confidentiality of a commission proceeding pursuant to the act shall be guilty of a Class III misdemeanor.

(2) A person who willfully affirms or swears falsely in regard to any material matter before a commission proceeding pursuant to the act shall be guilty of a Class IV felony.

Source: Laws 1976, LB 987, § 135; Laws 1977, LB 41, § 59; Laws 2005, LB 242, § 62.

49-14,136 Statute of limitations.

Prosecution for violation of the Nebraska Political Accountability and Disclosure Act shall be commenced within three years after the date on which the violation occurred.

Source: Laws 1976, LB 987, § 136; Laws 2005, LB 242, § 63.

49-14,137 Discipline of public officials or employees; effect of act.

The penalties prescribed in the Nebraska Political Accountability and Disclosure Act do not limit the power of the Legislature to discipline its own members or impeach a public official and do not limit the power of agencies or commissions to discipline officials or employees.

Source: Laws 1976, LB 987, § 137; Laws 2005, LB 242, § 64.

49-14,138 Local laws of political subdivisions; effect of act.

No political subdivision or municipality within the State of Nebraska in which candidates for their elective offices or elected officials are subject to the requirements of the Nebraska Political Accountability and Disclosure Act shall

require compliance with local provisions governing campaign receipts and expenditures or financial disclosures which are different from those established by the act.

Source: Laws 1976, LB 987, § 138; Laws 2005, LB 242, § 65.

49-14,139 Forms; distribution.

The county clerk or election commissioner in each county shall distribute forms prepared by the commission to any person required to file any statement or report pursuant to the Nebraska Political Accountability and Disclosure Act other than forms or statements under sections 49-1480 to 49-1492.01. Such forms shall include, but not be limited to, filing forms and instructions, statements of financial interest, and campaign committee organization forms.

Source: Laws 1983, LB 479, § 6; Laws 2005, LB 242, § 66.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-1495, 49-14,123, and 49-14,123.01. The fund shall not include late filing fees or civil penalties assessed and collected by the commission. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure 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 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5.

Cross References

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

CHAPTER 50
LEGISLATURE

Article.
1. General Provisions. 50-114.05.
4. Legislative Council. 50-401.01 to 50-448.
12. Legislative Performance Audit Act. 50-1203 to 50-1215.
13. Review of Boards and Commissions. 50-1302.

ARTICLE 1
GENERAL PROVISIONS

Section
50-114.05. Clerk of the Legislature Cash Fund; created; use; investment.

50-114.05 Clerk of the Legislature Cash Fund; created; use; investment.

The Clerk of the Legislature Cash Fund is hereby created. The fund shall consist of funds received by the Clerk of the Legislature pursuant to sections 49-1480.01 and 49-1482. The fund shall be used by the Clerk of the Legislature to perform the duties required by sections 49-1480 to 49-1492.01. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 872, § 14; Laws 1994, LB 1243, § 16; Laws 1995, LB 7, § 53; Laws 2005, LB 242, § 67.

Cross References

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

ARTICLE 4
LEGISLATIVE COUNCIL

Section
50-401.01. Legislative Council; executive board; members; selection; powers and duties.
50-417.01. Repealed. Laws 2006, LB 1019, § 23.
50-417.02. Act, how cited.
50-417.03. Terms, defined.
50-417.04. Law enforcement officers retirement plans survey; purpose; report; actuarial survey.
50-417.05. Political subdivisions and state; provide information; confidentiality.
50-417.06. State and political subdivisions; liability.
50-421. Office of Legislative Audit and Research; Director of Research; Legislative Auditor.
50-422. Health and Human Services Committee; behavioral health insurance parity study and actuarial analysis; report.
50-445. State-Tribal Relations Committee; members.
50-446. Corporate farming and ranching court rulings; legislative findings.
50-447. Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.

Section
50-448. Attorney General; duties; powers.

50-401.01 Legislative Council; executive board; members; selection; powers and duties.

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 2, 15, 21 to 30, 32, 34, and 46, two from legislative districts Nos. 3 to 14, 18, 20, 31, 39, and 45, and two from legislative districts Nos. 16, 17, 19, 33, 35 to 38, 40 to 44, and 47 to 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

Source: Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp.,1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485,

§ 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws 1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1.

50-417.01 Repealed. Laws 2006, LB 1019, § 23.

50-417.02 Act, how cited.

Sections 50-417.02 to 50-417.06 shall be known and may be cited as the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 12.

50-417.03 Terms, defined.

For purposes of the Law Enforcement Officers Retirement Survey Act:

(1) Committee means the Nebraska Retirement Systems Committee of the Legislature;

(2) Law enforcement officer means any police officer, sheriff, and deputy sheriff employed by a political subdivision and any conservation officer employed by the state;

(3) Political subdivision means any political subdivision of this state which employs police officers, sheriffs, or deputy sheriffs, but does not include a city of the metropolitan class, a city of the primary class, or a county containing a city of the metropolitan class; and

(4) Retirement system means the Nebraska Public Employees Retirement Systems.

Source: Laws 2007, LB328, § 13.

50-417.04 Law enforcement officers retirement plans survey; purpose; report; actuarial survey.

(1) The retirement system shall conduct a survey of the retirement plans currently in place for law enforcement officers throughout Nebraska. The retirement system shall conduct the survey and issue a report to the committee no later than October 1, 2007.

(2) At the time that the report is provided to the committee, information which supports the report shall be provided to any firm employed to conduct an actuarial survey from the information gathered by the retirement system upon the firm's request. The information provided shall not include any personal information such as the name or social security number of law enforcement officers.

(3) The survey shall include, but not be limited to, the following information:

(a) What types of retirement plans are in place for law enforcement officers; and

(b) Any other information which the retirement system or the committee deems necessary.

(4) The retirement system shall create, in consultation with the committee, a method to receive the materials required for the survey. The method shall utilize a unique identifier for each law enforcement officer, each political subdivision, and the state agency responding.

(5) The purpose of the survey is to conduct a review of the many retirement plans throughout Nebraska for law enforcement officers and to assist an actuarial firm in determining the cost to implement a defined benefit retirement plan with benefits capped at various levels between sixty and eighty percent of pay with costs separately determined for cities of the first class, cities of the second class, villages, counties, and the state.

Source: Laws 2007, LB328, § 14.

50-417.05 Political subdivisions and state; provide information; confidentiality.

Each political subdivision and the state shall provide the retirement system with such information as the retirement system deems necessary and appropriate to conduct the review required under section 50-417.04. The material to be obtained by the retirement system may include, but not be limited to, the following concerning law enforcement officers employed by the political subdivision or the state:

(1) Names;

(2) Dates of birth;

(3) Dates of hire;

(4) Taxable earnings for the prior fiscal year;

(5) Years of service;

(6) Gender;

(7) Whether or not the law enforcement officer is enrolled in a retirement plan;

(8) The type of plan the law enforcement officer is enrolled in, the required employee contribution percentage, and the employer contribution percentage, along with an indication if it is a fixed percentage or a variable contribution rate. If the law enforcement officer is enrolled in a defined contribution plan, the political subdivision or state shall also disclose the account balance attributable to employer contributions and employee contributions, excluding any balance due to rollovers from another qualified plan or attributable to voluntary employee contributions; and

(9) Any other information that the retirement system or the committee deems important to the conduct of the survey.

Any material received by the retirement system shall be considered confidential and shall not be disclosed to a third party except as provided in subsection (2) of section 50-417.04.

Source: Laws 2007, LB328, § 15.

50-417.06 State and political subdivisions; liability.

Neither the state nor any political subdivision shall be held liable for providing information requested or be responsible for the payment of the actuarial survey under the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 16.

50-421 Office of Legislative Audit and Research; Director of Research; Legislative Auditor.

The office of Legislative Audit and Research is established within the Legislative Council. The office shall provide legal and public policy research, maintain a legislative reference library, and conduct performance audits. The Director of Research shall be responsible for hiring, firing, and supervising all office staff except those employed to conduct performance audits. The Legislative Auditor shall be responsible for hiring, firing, and supervising the performance audit staff.

Source: Laws 2006, LB 956, § 2.

50-422 Health and Human Services Committee; behavioral health insurance parity study and actuarial analysis; report.

The Health and Human Services Committee of the Legislature shall provide for an independent study and actuarial analysis of the impact of behavioral health insurance parity legislation in the State of Nebraska. A report of such study and analysis shall be submitted to the Governor, the Health and Human Services Committee of the Legislature, and the Banking, Commerce and Insurance Committee of the Legislature on or before December 1, 2006.

Source: Laws 2006, LB 1248, § 89.

50-445 State-Tribal Relations Committee; members.

The State-Tribal Relations Committee is hereby established as a special legislative committee with the intent of fostering better relationships between the state and the federally recognized Indian tribes within the state. The Executive Board of the Legislative Council shall appoint seven members of the Legislature to the committee. The appointments shall be based on interest and knowledge. The chairperson and vice-chairperson of the State-Tribal Relations Committee shall also be designated by the executive board. All appointments shall be made within the first six days of the legislative session in odd-numbered years. Members shall serve two-year terms corresponding with legislative sessions and may be reappointed for consecutive terms. The committee shall meet as necessary to, among other things, consider, study, monitor, and review legislation that impacts state-tribal relations issues and to present draft legislation and policy recommendations to the appropriate standing committee of the Legislature.

Source: Laws 2007, LB34, § 1.

50-446 Corporate farming and ranching court rulings; legislative findings.

The Legislature finds that the ruling of the United States District Court for the District of Nebraska in Jones v. Gale, 405 F. Supp. 2d 1066, D. Neb. 2005, and subsequent rulings on appeal affirming such ruling holding Article XII, section 8, of the Constitution of Nebraska to be invalid, enjoined, or limited in application has significant implications for the future structure, development, and progress of agricultural production in Nebraska.

Source: Laws 2007, LB516, § 1.

50-447 Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.

(1) It is the intent of the Legislature to support and facilitate a study by the Agriculture Committee of the Legislature to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production.

(2) Within the limits of funds appropriated for such purpose, the Executive Board of the Legislative Council may, in coordination and cooperation with the Agriculture Committee of the Legislature, commission experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to provide assistance, specific research or reports, or presentations in order to assist the Agriculture Committee of the Legislature in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 2.

50-448 Attorney General; duties; powers.

(1) It is the intent of the Legislature that the Attorney General perform, acquire, and otherwise cause to be made available such research as may be appropriate to inform and assist the Agriculture Committee of the Legislature in identifying policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production in Nebraska.

(2) The Attorney General may contract with experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to assist the Attorney General in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 3.

ARTICLE 12

LEGISLATIVE PERFORMANCE AUDIT ACT

Section

50-1203 Terms, defined.

For purposes of the Legislative Performance Audit Act:

(1) Agency means any department, board, commission, or other governmental unit of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska but does not include (a) any court, (b) the Governor or his or her personal staff, (c) any political subdivision or entity thereof, or (d) any entity of the federal government;

(2) Auditor of Public Accounts means the Auditor of Public Accounts whose powers and duties are prescribed in section 84-304;

(3) Business day means a day on which state offices are open for regular business;

(4) Committee means the Legislative Performance Audit Committee;

(5) Committee report means the report released by the committee at the conclusion of a performance audit;

(6) Legislative Auditor means the Legislative Auditor appointed by the Executive Board of the Legislative Council under section 50-401.01;

(7) Majority vote means a vote by the majority of the committee's members;

(8) Performance audit means an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decisionmaking by parties with responsibility to oversee or initiate corrective action. Performance audits may have a variety of objectives, including the assessment of a program's effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements;

(9) Preaudit inquiry means an investigatory process during which the section gathers and examines evidence to determine if a performance audit topic has merit;

(10) Section means the Legislative Performance Audit Section; and

(11) Working papers means those documents containing evidence to support the section's findings, opinions, conclusions, and judgments and includes the collection of evidence prepared or obtained by the section during the performance audit or preaudit inquiry.

Source: Laws 1992, LB 988, § 3; Laws 2003, LB 607, § 5; Laws 2004, LB 1118, § 1; Laws 2006, LB 588, § 1; Laws 2006, LB 956, § 3.

50-1204 Legislative Performance Audit Committee; established; membership; officers; Legislative Performance Audit Section; established; duties.

(1) The Legislative Performance Audit Committee is hereby established as a special legislative committee to exercise the authority and perform the duties provided for in the Legislative Performance Audit Act. The committee shall be composed of the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the chairperson of the Appropriations Committee of the Legislature, and four other members of the Legislature to be chosen by the Executive Board of the Legislative Council. The executive board shall ensure that the Legislative Performance Audit Committee includes adequate geographic representation. The chairperson and vice-chairperson of the

Legislative Performance Audit Committee shall be elected by majority vote. The committee shall be subject to all rules prescribed by the Legislature. The committee shall be reconstituted at the beginning of each Legislature and shall meet as needed.

(2) The Legislative Performance Audit Section is established. The section shall be administered by the Legislative Auditor, who shall ensure that performance audit work conducted by the section conforms with performance audit standards contained in the Government Auditing Standards (2007 revision) as required in section 50-1205.01. The section shall be composed of the Legislative Auditor and other employees of the Legislature employed to conduct performance audits. The section shall be the custodian of all records generated by the committee or section except as provided by section 50-1213, subsection (11) of section 77-2711, or subdivision (10)(a) of section 77-27,119. The section shall inform the Legislative Fiscal Analyst of its activities and consult with him or her as needed. The section 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. Effective date July 18, 2008.

50-1205 Committee; duties.

The committee shall:

(1) Adopt, by majority vote, procedures consistent with the Legislative Performance Audit Act to govern the business of the committee and the conduct of performance audits;

(2) Ensure that performance audits done by the committee are not undertaken based on or influenced by special or partisan interests;

(3) Review performance audit requests and select, by majority vote, agencies or agency programs for performance audit;

(4) Review, amend, if necessary, and approve a scope statement and an audit plan for each performance audit;

(5) Respond to inquiries regarding performance audits;

(6) Inspect or approve the inspection of the premises, or any parts thereof, of any agency or any property owned, leased, or operated by an agency as frequently as is necessary in the opinion of the committee to carry out a performance audit or preaudit inquiry;

(7) Inspect and examine, or approve the inspection and examination of, the records and documents of any agency as a part of a performance audit or preaudit inquiry;

(8) Administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the depositions of witnesses either residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the district court;

(9) Review completed performance audit reports prepared by the section, together with comments from the evaluated agency, and adopt recommendations and incorporate them into a committee report;

(10) Release the committee report to the public and distribute it to the Legislature with or without benefit of a public hearing;

(11) Hold a public hearing, at the committee's discretion, for the purpose of receiving testimony prior to issuance of the committee report;

(12) Establish a system to ascertain and monitor an agency's implementation of the recommendations contained in the committee report and compliance with any statutory changes resulting from the recommendations;

(13) Issue an annual report each September, to be prepared by the Legislative Auditor and approved by the committee, summarizing recommendations made pursuant to reports of performance audits during the previous fiscal year and the status of implementation of those recommendations;

(14) Consult with the Legislative Auditor regarding the staffing and budgetary needs of the section and assist in presenting budget requests to the Appropriations Committee of the Legislature;

(15) Approve or reject, within the budgetary limits of the section, contracts to retain consultants to assist with performance audits requiring specialized knowledge or expertise. Requests for consultant contracts shall be approved by the Legislative Auditor and presented to the Legislative Performance Audit Committee by the Legislative Auditor. A majority vote shall be required to approve consultant contract requests. For purposes of section 50-1213, subsection (11) of section 77-2711, and subsections (10) through (13) of section 77-27,119, any consultant retained to assist with a performance audit or preaudit inquiry shall be considered an employee of the section during the course of the contract; and

(16) At its discretion, and with the agreement of the Auditor of Public Accounts, conduct joint fiscal or performance audits with the Auditor of Public Accounts. The details of any joint audit shall be agreed upon in writing by the committee and the Auditor of Public Accounts.

Source: Laws 1992, LB 988, § 5; Laws 2003, LB 607, § 7; Laws 2006, LB 588, § 3; Laws 2006, LB 956, § 5.

50-1205.01 Performance audits; standards.

Performance audits done under the terms of the Legislative Performance Audit Act shall be conducted in accordance with the generally accepted government auditing standards for performance audits contained in the Government Auditing Standards (2007 Revision), published by the Comptroller General of the United States, Government Accountability Office.

Source: Laws 2003, LB 607, § 8; Laws 2004, LB 1118, § 2; Laws 2006, LB 588, § 4; Laws 2008, LB822, § 2.
Effective date July 18, 2008.

50-1206 Performance audits; how initiated; procedure.

(1) Requests for performance audits may be made by the Governor, any other constitutional officer of the State of Nebraska, a legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or the Director of Research of the Legislature.

(2) Performance audit requests shall be submitted to the committee chairperson or Legislative Auditor by letter or on a form developed by the Legislative Auditor.

(3) When considering a performance audit request, if the committee determines that the request has potential merit but insufficient information is available, it may, by majority vote, instruct the Legislative Auditor to conduct a preaudit inquiry.

(4) Upon completion of the preaudit inquiry, the committee chairperson shall place the request on the agenda for the committee's next meeting and shall notify the request sponsor of that action.

Source: Laws 1992, LB 988, § 6; Laws 2003, LB 607, § 9; Laws 2006, LB 956, § 6; Laws 2008, LB822, § 3.
Effective date July 18, 2008.

50-1207 Performance audits; criteria.

The committee may develop criteria to be used to screen requests for performance audits. The committee shall consult with the Legislative Auditor in the application of the screening criteria.

Source: Laws 1992, LB 988, § 7; Laws 2003, LB 607, § 10; Laws 2006, LB 956, § 7.

50-1208 Performance audit; committee; duties; section; duties.

(1) The committee shall, by majority vote, adopt requests for performance audit. The committee chairperson shall notify each requester of any action taken on his or her request.

(2) Before the section begins a performance audit, it shall notify in writing the agency director, the program director, when relevant, and the Governor that a performance audit will be conducted.

(3) Following notification, the section shall arrange an entrance conference to provide the agency with further information about the audit process. The agency director shall inform the agency staff, in writing, of the performance audit and shall instruct agency staff to cooperate fully with the section.

(4) After the entrance conference, the section shall conduct the research necessary to draft a scope statement for consideration by the committee. The scope statement shall identify the specific issues to be addressed in the audit. The committee shall, by majority vote, adopt, reject, or amend and adopt the scope statement prepared by the section.

(5) Once the committee has adopted a scope statement, the section shall develop an audit plan. The audit plan shall include a description of the research and audit methodologies to be employed and a projected deadline for completion of the section's report. The audit plan shall be submitted to the committee, and a majority vote shall be required for its approval.

(6) If the performance audit reveals a need to modify the scope statement or audit plan, the Legislative Auditor may request that the committee make revisions. A majority vote shall be required to revise the scope statement or audit plan. The agency shall be notified in writing of any revision to the scope statement or audit plan.

Source: Laws 1992, LB 988, § 8; Laws 2003, LB 607, § 11; Laws 2006, LB 956, § 8.

50-1210 Report of findings and recommendations; distribution; confidentiality; agency response.

(1) Upon completion of a performance audit, the section shall prepare a report of its findings and recommendations for action. The Legislative Auditor shall provide the section's report concurrently to the committee, agency director, and Legislative Fiscal Analyst. The committee may, by majority vote, release the section's report or portions thereof to other individuals, with the stipulation that the released material shall be kept confidential.

(2) When the Legislative Auditor provides the report to the Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an opinion to the committee indicating whether the section's recommendations can be implemented by the agency within its current appropriation.

(3) When the Legislative Auditor provides the report to the agency, the agency shall have twenty business days from the date of receipt of the report to provide a written response. Any written response received from the agency shall be attached to the committee report. The agency shall not release any part of the report to any person outside the agency, except that an agency may discuss the report with the Governor. The Governor shall not release any part of the report.

(4) Following receipt of any written response from the agency, the Legislative Auditor shall prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations.

Source: Laws 1992, LB 988, § 10; Laws 2003, LB 607, § 13; Laws 2006, LB 956, § 9.

50-1211 Committee; review materials; reports; public hearing; procedure.

(1) The committee shall review the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and the Legislative Fiscal Analyst's opinion prescribed in section 50-1210. The committee may amend and shall adopt or reject each recommendation in the report and indicate whether each recommendation can be implemented by the agency within its current appropriation. The adopted recommendations shall be incorporated into a committee report, which shall be approved by majority vote.

(2) The committee report shall include, but not be limited to, the section's report, the agency's written response to the report, the Legislative Auditor's summary of the agency response, the committee's recommendations, and any opinions of the Legislative Fiscal Analyst regarding whether the committee's recommendations can be implemented by the agency within its current appropriation.

(3) The committee may decide, by majority vote, to defer adoption of a committee report pending a public hearing. If the committee elects to schedule a public hearing, it shall release, for review by interested persons prior to the hearing, the section's report, the agency's response, the Legislative Auditor's summary of the agency's response, and any opinions of the Legislative Fiscal Analyst. The public hearing shall be held not less than ten nor more than twenty business days following release of the materials.

(4) When the committee elects to schedule a hearing, a summary of the testimony received at the hearing shall be attached to the committee report as an addendum. A transcript of the testimony received at the hearing shall be on file with the committee and available for public inspection. Unless the commit-

tee votes to delay release of the committee report, the report shall be released within forty business days after the public hearing.

(5) Once the committee has approved its report, the committee shall, by majority vote, cause the committee report to be released to all members of the Legislature and to the public. The committee may, by majority vote, release the committee report or portions thereof prior to public release of the report.

Source: Laws 1992, LB 988, § 11; Laws 2003, LB 607, § 14; Laws 2006, LB 956, § 10.

50-1213 Section; access to information and records; prohibited acts; penalty; proceedings; not reviewable by court; committee or section employee; privilege; working papers; not public records.

(1) The section shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the section access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(2) Except as provided in this section, any confidential information or confidential records shared with the section shall remain confidential and shall not be shared by an employee of the section with any person who is not an employee of the section, including any member of the committee. If necessary for the conduct of the performance audit, the section may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the section and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(3) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the section knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(4) No proceeding of the committee or opinion or expression of any member of the committee or section employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or section employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the section except in a proceeding brought to enforce the Legislative Performance Audit Act.

(5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or section shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the section.

Source: Laws 1992, LB 988, § 13; Laws 2003, LB 607, § 16; Laws 2006, LB 588, § 5.

50-1214 Names not included in documents, when; state employee; immunity.

By majority vote, the committee may decide not to include in any document that will be a public record the names of persons providing information to the section or committee.

No employee of the State of Nebraska who provides information to the committee or section shall be subject to any penalties, sanctions, or restrictions in connection with his or her employment as a result of the provision of such information.

Source: Laws 1992, LB 988, § 14; Laws 2003, LB 607, § 17; Laws 2006, LB 588, § 6.

50-1215 Violations; penalty.

Any person who willfully obstructs or hinders the conduct of a performance audit or preaudit inquiry or who willfully misleads or attempts to mislead any person charged with the duty of conducting a performance audit or preaudit inquiry shall be guilty of a Class II misdemeanor.

Source: Laws 1992, LB 988, § 15; Laws 2003, LB 607, § 18; Laws 2006, LB 588, § 7.

ARTICLE 13

REVIEW OF BOARDS AND COMMISSIONS

Section
50-1302. Government, Military and Veterans Affairs Committee; report.

50-1302 Government, Military and Veterans Affairs Committee; report.

(1) Every four years, beginning in 2008, the Government, Military and Veterans Affairs Committee of the Legislature shall prepare and publish a report pertaining to boards, commissions, and similar entities created by law that are made part of or are placed in the executive branch of state government. The committee may also include entities created by executive order or by an agency director. The report shall be submitted to the Legislature on December 1 of such year.

(2) The report shall include, but not be limited to, the following:

(a) The name of each board, commission, or similar entity;

(b) The name of a parent agency, if any;

(c) The statutory citation or other authorization for the creation of the board, commission, or entity;

(d) The number of members of the board, commission, or entity and how the members are appointed;

(e) The qualifications for membership on the board, commission, or entity;

(f) The number of times the board, commission, or entity is required to meet during the year and the number of times it actually met;

(g) Budget information of the board, commission, or entity for the four most recently completed fiscal years; and

(h) A brief summary of the accomplishments of the board, commission, or entity for the past four years.

Source: Laws 1999, LB 298, § 2; Laws 2002, LB 93, § 4; Laws 2005, LB 241, § 1.

CHAPTER 51
LIBRARIES AND MUSEUMS

ARTICLE 2
PUBLIC LIBRARIES

51-201.03 County library; petition to establish; procedure; election.

(1) The registered voters of the incorporated and unincorporated areas of a county which do not have a public library may file an initiative petition with the county board requesting the establishment of a county library. The petition shall be filed by July 31 prior to a statewide general election. Signatures gathered before the last statewide general election shall not be counted. An initiative petition shall conform to the requirements of section 32-628. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The county board shall submit the petitions to the election commissioner or county clerk for signature verification pursuant to section 32-631. The required number of signatures shall be five percent of the voters registered at the last statewide general election in the incorporated and unincorporated areas of the county which do not have a public library. The election commissioner or county clerk shall notify the county board within thirty days after receiving the petitions from the county board whether the required number of signatures has been gathered.

(2) If the county board determines that the petitions are in proper form and signed by the necessary number of registered voters, the county board shall notify the governing body and library board of each incorporated area within the county within ten days after such determination and shall publish in a newspaper of general circulation in the county that the registered voters of the unincorporated area of the county and of the incorporated areas which do not have a public library will be asked to vote on the issue at the next statewide general election and shall submit the question of whether to establish a county library to the voters as required in section 51-201.

Source: Laws 1997, LB 250, § 11; Laws 2008, LB269, § 12.
Effective date July 18, 2008.

CHAPTER 52
LIENS

Article.
1. Construction Lien.
   (a) Miscellaneous. 52-118.
4. Lien of Physician, Nurse, or Hospital. 52-401.
6. Lien for Services Performed upon Personal Property. 52-604.
13. Filing System for Farm Product Security Interests. 52-1301 to 52-1318.
16. Master Lien List. 52-1602.
18. Mobile Homes. 52-1801.

ARTICLE 1
CONSTRUCTION LIEN

(a) MISCELLANEOUS

Section
52-118. Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(a) MISCELLANEOUS

52-118 Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond or bonds referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total cost of ten thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond or bonds referred to in subsection (1) of this section shall be to, filed with, approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract referred to in subsection (1) of this section shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond or bonds referred to in subsection (1) of this section has been so made, filed, and approved.

(4) The bond or bonds referred to in subsection (1) of this section may be taken from the person to whom the contract is awarded by the owner and owner's representative jointly as determined by the owner. The corporate surety company referred to in subsection (1) of this section shall have a rating acceptable to the owner as the owner may require.

Source: Laws 1889, c. 28, § 1, p. 375; Laws 1913, c. 170, § 1, p. 522; R.S.1913, § 3840; C.S.1922, § 3224; C.S.1929, § 52-118; R.S. 1943, § 52-118; Laws 1953, c. 179, § 4, p. 567; Laws 1955, c. 199, § 1, p. 565; Laws 1961, c. 257, § 4, p. 754; Laws 1990, LB 257, § 1; Laws 2001, LB 420, § 32; Laws 2007, LB208, § 1.

ARTICLE 4

LIEN OF PHYSICIAN, NURSE, OR HOSPITAL

Section
52-401. Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

52-401 Lien; scope and operation; exception; reduction, when; claim of lien; notice; priority of claims; access to records.

Whenever any person employs a physician, nurse, chiropractor, or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person claims damages from the party causing the injury, such physician, nurse, chiropractor, or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the usual and customary charges of such physician, nurse, chiropractor, or hospital applicable at the times services are performed, except that no such lien shall be valid against anyone coming under the Nebraska Workers' Compensation Act. For persons covered under private medical insurance or another private health benefit plan, the amount of the lien shall be reduced by the contracted discount or other limitation which would have been applied had the claim been submitted for reimbursement to the medical insurer or administrator of such other health benefit plan. The measure of damages for medical expenses in personal injury claims shall be the private party rate, not the discounted amount.

In order to prosecute such lien, it shall be necessary for such physician, nurse, chiropractor, or hospital to serve a written notice upon the person or corporation from whom damages are claimed that such physician, nurse, chiropractor, or hospital claims a lien for such services and stating the amount due and the nature of such services, except that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

A physician, nurse, chiropractor, or hospital claiming a lien under this section shall not be liable for attorney's fees and costs incurred by the injured

person in securing the judgment, settlement, or compromise, but the lien of the injured person's attorney shall have precedence over the lien created by this section.

Upon a written request and with the injured person's consent, a lienholder shall provide medical records, answers to interrogatories, depositions, or any expert medical testimony related to the recovery of damages within its custody and control at a reasonable charge to the injured person.

Source: Laws 1927, c. 162, § 1, p. 425; C.S.1929, § 52-401; R.S.1943, § 52-401; Laws 1986, LB 811, § 138; Laws 1995, LB 172, § 1; Laws 2008, LB586, § 1.
Effective date March 11, 2008.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

ARTICLE 6

LIEN FOR SERVICES PERFORMED UPON PERSONAL PROPERTY

Section
52-604. Sale; proceeds; distribution.

52-604 Sale; proceeds; distribution.

From the proceeds of such sale the claimant shall satisfy his or her lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be delivered to the county treasurer of the county in which the sale was made. The treasurer of the county in which the property was sold shall issue his or her receipt therefor. The county treasurer shall make proper entry in the books of his or her office of all money so paid over to him or her, and shall hold the money for a period of five years, and immediately thereafter shall pay the same into the school fund of the proper county, to be appropriated for the support of the schools, unless the owner of the property sold, his or her legal representatives, or any lien or security interest holder of record, shall within such period of five years after such money shall have been deposited with the treasurer, furnish satisfactory evidence of the ownership of such property or satisfactory evidence of the lien or security interest, in which event he, she, or they shall be entitled to receive from such treasurer the amount so deposited with him or her.

Source: Laws 1923, c. 118, § 4, p. 281; C.S.1929, § 52-604; R.S.1943, § 52-604; Laws 1974, LB 960, § 3; Laws 2005, LB 82, § 1.

ARTICLE 13

FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS

Section
52-1301. Legislative intent.
52-1302. Definitions, where found.
52-1302.01. Approved unique identifier, defined.
52-1307. Effective financing statement, defined.
52-1308. Farm product, defined.
52-1312. Central filing system; Secretary of State; duties; system requirements; fees.
52-1313. Filing of effective financing statement; fees.
52-1314. Filing of continuation statement; requirements; insolvency proceedings; effect.

Section
52-1315. Notice of lapse of effective financing statement; waiver of notice; effect.
52-1317. Verification of security interest; seller; duty.
52-1318. Rules and regulations; federal provisions adopted; Secretary of State; duties.

52-1301 Legislative intent.

It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products produced or located in the State of Nebraska which are included in the central filing system.

Source: Laws 1986, Third Spec. Sess., LB 1, § 1; Laws 2007, LB124, § 58.

52-1302 Definitions, where found.

For purposes of sections 52-1301 to 52-1322, unless the context otherwise requires, the definitions found in sections 52-1302.01 to 52-1311 shall be used.

Source: Laws 1986, Third Spec. Sess., LB 1, § 2; Laws 1998, LB 924, § 19; Laws 2003, LB 4, § 1; Laws 2007, LB124, § 59.

52-1302.01 Approved unique identifier, defined.

Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of the United States Department of Agriculture.

Source: Laws 2007, LB124, § 60.

52-1307 Effective financing statement, defined.

Effective financing statement means a statement that:

(1) Is an original or reproduced copy thereof;

(2) Is filed by the secured party in the office of the Secretary of State;

(3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;

(4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number or other approved unique identifier of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the

Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;

(5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;

(6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;

(7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Source: Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61.

52-1308 Farm product, defined.

Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Source: Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62.

52-1312 Central filing system; Secretary of State; duties; system requirements; fees.

The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the social security number or other approved unique identifier of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number or other approved unique identifier for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63.

52-1313 Filing of effective financing statement; fees.

(1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall be ten dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

(4) The Secretary of State shall deposit any fees received pursuant to this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 13; Laws 1998, LB 924, § 22; Laws 1998, LB 1321, § 92; Laws 2003, LB 4, § 3; Laws 2004, LB 1099, § 1; Laws 2007, LB124, § 64.

52-1314 Filing of continuation statement; requirements; insolvency proceedings; effect.

(1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Source: Laws 1986, Third Spec. Sess., LB 1, § 14; Laws 1999, LB 552, § 2; Laws 2002, LB 1105, § 440; Laws 2007, LB124, § 65.

52-1315 Notice of lapse of effective financing statement; waiver of notice; effect.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has

received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Source: Laws 1986, Third Spec. Sess., LB 1, § 15; Laws 1988, LB 943, § 14; Laws 1998, LB 1321, § 93; Laws 2007, LB124, § 66.

52-1317 Verification of security interest; seller; duty.

In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or approved unique identifier or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number or approved unique identifier of such seller.

Source: Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67.

52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties.

(1) The State of Nebraska hereby adopts the federal rules and regulations in effect on September 1, 2007, adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

Source: Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 16
MASTER LIEN LIST

Section
52-1602. Master lien list; distribution; registration to receive list; fee.

52-1602 Master lien list; distribution; registration to receive list; fee.

(1) The master lien list prescribed in section 52-1601 shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1322. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69.

ARTICLE 18

MOBILE HOMES

Section
52-1801. Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

52-1801 Mobile home security interest; perfection; mobile home certificate of title; notation of lien; laws applicable.

(1) Any security interest in a mobile home perfected on or after July 15, 1992, and prior to April 8, 1993, shall continue to be perfected:

(a) Until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code; or

(b) Until a lien is noted on the face of the certificate of title for the mobile home pursuant to section 60-164.

(2) Any lien noted on the face of a mobile home certificate of title on or after April 8, 1993, pursuant to subdivision (1)(b) of this section on behalf of the holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to April 8, 1993, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a mobile home certificate of title shall, upon request, surrender the mobile home certificate of title to a holder of a security interest in the mobile home which was perfected on or after July 15, 1992, and prior to

April 8, 1993, to permit notation of a lien on the mobile home certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of a mobile home subject to a security interest perfected on or after July 15, 1992, and prior to April 8, 1993, fails or refuses to obtain a certificate of title after April 8, 1993, the security interest holder may obtain a certificate of title in the name of the owner of the mobile home following the procedures of subsection (2) of section 60-147 and may have a lien noted on the certificate of title pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in a mobile home shall be governed under the laws under which it was perfected.

(6) This section shall not affect the validity or priority of a lien established against a mobile home by the notation of such lien on the mobile home certificate of title prior to July 15, 1992.

Source: Laws 1993, LB 340, § 3; Laws 1999, LB 550, § 35; Laws 2005, LB 276, § 101.

CHAPTER 53
LIQUORS

Article.
1. Nebraska Liquor Control Act.
   (a) General Provisions. 53-101, 53-103.
   (c) Nebraska Liquor Control Commission; General Powers. 53-116.02 to 53-117.07.
   (d) Licenses; Issuance and Revocation. 53-122 to 53-134.03.
   (f) Tax. 53-163, 53-164.01.
   (g) Manufacturer's and Wholesaler's Record and Report. 53-165.
   (h) Keg Sales. 53-167.03, 53-167.04.
   (i) Prohibited Acts. 53-169 to 53-188.
   (k) Prosecution and Enforcement. 53-1,115.
2. Beer Distribution. 53-208.
3. Nebraska Grape and Winery Board. 53-304.
4. Minor Alcoholic Liquor Liability Act. 53-401 to 53-409.

ARTICLE 1
NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section
53-101. Act, how cited.
53-103. Terms, defined.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-116.02. Licensee; violations; forfeiture or revocation of license.
53-117.03. Employee and management training; commission; powers and duties; fees; certification.
53-117.06. Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.
53-117.07. Proceedings to suspend, cancel, or revoke licenses before commission.

(d) LICENSES; ISSUANCE AND REVOCATION

53-122. Sale of liquor by drink; election; submission; procedure; when not required; prohibited acts; penalties.
53-123. Licenses; types.
53-123.04. Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.
53-123.11. Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.
53-123.13. Farm winery; waiver of requirement; when; conditions.
53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.
53-123.16. Microdistillery license; rights of licensee.
53-124. Annual license fees; where paid.
53-124.11. Special designated license; issuance; procedure; fee.
53-124.12. Annual catering license; issuance; procedure; fee; occupation tax.
53-129. Retail, craft brewery, and microdistillery licenses; premises to which applicable.
53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county.
53-132. Retail, craft brewery, or microdistillery license; commission; duties.

(a) GENERAL PROVISIONS

53-101 Act, how cited.

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1.

53-103 Terms, defined.

For purposes of the Nebraska Liquor Control Act, unless the context otherwise requires:

(1) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

(2) Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy,

rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

(3) Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

(4) Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

(5) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

(6) Near beer means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

(8) Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(9) Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

(10) Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

(11) Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler

does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

(12) Person means any natural person, trustee, corporation, partnership, or limited liability company;

(13) Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

(14) Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission means the Nebraska Liquor Control Commission;

(16) Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

(17) To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

(18) Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

(19) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(20) Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and

dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

(21) Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

(22) Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

(23) Brand means alcoholic liquor identified as the product of a specific manufacturer;

(24) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(25) Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(26) Suspend means to cause a temporary interruption of all rights and privileges of a license;

(27) Cancel means to discontinue all rights and privileges of a license;

(28) Revoke means to permanently void and recall all rights and privileges of a license;

(29) Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

(30) Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

(31) Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state or which meets the requirements of section 53-123.13;

(32) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets;

(33) Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

(34) Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the

requirements of the act as though he or she were the applicant, except for residency and citizenship;

(35) Shipping license means a license granted pursuant to section 53-123.15;

(36) Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

(37) Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

(38) Craft brewery means a brewpub or a microbrewery;

(39) Local governing body means (a) the city council or village board of trustees of a city or village within which the licensed premises are located or (b) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located;

(40) Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor; and

(41) Microdistillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually.

Source: Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S. 1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 319, § 1, p. 904; Laws 1965, c. 318, § 2, p. 886; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 279, § 2; Laws 1985, LB 183, § 1; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 441, § 2; Laws 1989, LB 154, § 1; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2; Laws 2008, LB1103, § 1.
Effective date July 18, 2008.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-116.02 Licensee; violations; forfeiture or revocation of license.

Whenever any retail licensee, craft brewery licensee, or microdistillery licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

Source: Laws 1935, c. 116, § 47, p. 403; C.S.Supp.,1941, § 53-347; R.S.1943, § 53-128; Laws 1989, LB 781, § 7; R.S.Supp.,1990,

§ 53-128; Laws 1991, LB 344, § 10; Laws 1993, LB 183, § 4; Laws 1999, LB 267, § 4; Laws 2004, LB 485, § 5; Laws 2007, LB549, § 3.

53-117.03 Employee and management training; commission; powers and duties; fees; certification.

(1) On or before January 1, 2007, the commission shall adopt and promulgate rules and regulations governing programs which provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. Such rules and regulations may include, but need not be limited to:

(a) Minimum standards governing training of beverage servers, including standards and requirements governing curriculum, program trainers, and certification requirements;

(b) Minimum standards governing training in management of licensed premises, including standards and requirements governing curriculum, program trainers, and certification requirements;

(c) Minimum standards governing the methods allowed for training programs which may include the Internet, interactive video, live training in various locations across the state, and other means deemed appropriate by the commission;

(d) Methods for approving beverage-server training organizations and programs. All beverage-server training programs approved by the commission shall issue a certificate of completion to all persons who successfully complete the program and shall provide the names of all persons completing the program to the commission;

(e) Enrollment fees in an amount determined by the commission to be necessary to cover the expense of enrolling in a training program offered by the commission pursuant to subsection (2) of this section, but not to exceed thirty dollars; and

(f) Procedures and fees for certification, which fees shall be in an amount determined by the commission to be sufficient to defray the expenses associated with maintaining a list of persons certified under this section and issuing proof of certification to eligible individuals but shall not exceed twenty dollars.

(2) The commission may create a program to provide training for persons employed in the sale and service of alcoholic liquor and management of licensed premises. The program shall include training on the issues of sales and service of alcoholic liquor to minors and to visibly inebriated purchasers. The commission may charge each person enrolling in the program an enrollment fee as provided in the rules and regulations, but such fee shall not exceed thirty dollars. All such fees shall be collected by the commission and remitted to the State Treasurer for credit to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

(3) A person who has completed a training program which complies with the rules and regulations, whether such program is offered by the commission or by another organization, may become certified by the commission upon the commission receiving evidence that he or she has completed such program and

the person seeking certification paying the certification fee established under this section.

Source: Laws 2006, LB 845, § 3.

53-117.06 Nebraska Liquor Control Commission Rule and Regulation Cash Fund; created; use; investment.

Any money collected by the commission pursuant to section 53-117.05 or 53-167.02 shall be credited to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund, which fund is hereby created. The purpose of the fund shall be to cover any costs incurred by the commission in producing or distributing the material referred to in such sections and to defray the costs associated with electronic regulatory transactions, industry education events, enforcement training, and equipment for regulatory work. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 70, § 4; Laws 1989, LB 781, § 18; Laws 1993, LB 183, § 7; Laws 1993, LB 332, § 6; Laws 1994, LB 1066, § 42; Laws 2008, LB993, § 1.
Effective date July 18, 2008.

Cross References

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

53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission.

All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, and boats shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

Source: Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4.

(d) LICENSES; ISSUANCE AND REVOCATION

53-122 Sale of liquor by drink; election; submission; procedure; when not required; prohibited acts; penalties.

(1) The commission may issue licenses for the sale of alcoholic liquor, except beer, by the drink subject to all the terms and conditions of the Nebraska Liquor Control Act in all cities and villages in this state, except in those cases when it affirmatively appears that the issuance will render null and void prior conveyances of land to such city or village for public uses and purposes by purchase, gift, or devise, under the conditions and in the manner provided in this section.

(2) If (a) a sufficient petition is signed by the registered voters of any such city or village of such number as equals twenty percent of the votes cast at the last general election held in such city or village, which petition requests that the question of licensing the sale of alcoholic liquor, except beer, by the drink in the city or village be submitted to the registered voters of the city or village at a special election to be called for that purpose and (b) such petition is presented to the clerk of the city or village, the clerk shall cause to be published one time in a legal newspaper published in or of general circulation in the city or village a notice of a special election to be held not less than ten days nor more than twenty days after the date of such publication. The notice shall state the proposition to be submitted at such special election.

(3) The question of licensing the sale of alcoholic liquor either by the drink or in the original package, or both by the drink and in the original package, may also be submitted at any general municipal election, except as otherwise provided in section 53-121, in any city or village in this state subject to the following:

(a) Upon the filing with the clerk of the city or village of a petition signed by registered voters of the city or village in a number equal to twenty percent of the votes cast at the last general election held in the city or village, such proposition or propositions shall be submitted;

(b) Each petition shall conform to the requirements of section 32-628;

(c) At the top of each sheet shall be stated the proposition or propositions to be submitted and the date of the general municipal election at which it is proposed to be submitted;

(d) No signature on the petition shall be valid unless appended to the petition within the last ninety days prior to the date of filing the petition with the clerk of the city or village; and

(e) The petition shall be filed thirty days prior to the day of the general municipal election at which the proposition is to be submitted, and during such thirty-day period no signature shall be withdrawn and no signature shall be added.

(4) Any person who signs any proposal or petition contemplated under this section knowing that he or she is not a registered voter in the place where such proposal or petition is made, who signs any name other than his or her own to such proposal or petition, or who aids or abets any other person in doing any of the acts mentioned is guilty of a Class I misdemeanor. Any person who bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign such proposal or petition, who accepts money for signing such proposal or petition, or who aids or abets any other person in doing any of such acts is guilty of a Class IV felony.

(5) Upon the ballot either at the special election or at any general municipal election, the proposition or propositions shall be stated as follows:

Shall the sale of alcoholic liquor, except beer, by the drink be licensed in (here insert the name of the city or village)?

.... For license to sell by drink.

.... Against license to sell by drink.

Shall the sale of alcoholic liquor, except beer, by the package be licensed in (here insert the name of the city or village)?

…. For license to sell by the package.

…. Against license to sell by the package.

The provisions of the Election Act relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of elections, and recounts of votes, so far as applicable, shall apply to voting on the proposition or propositions under the Nebraska Liquor Control Act, and a majority vote of those voting on the question shall be mandatory upon the commission.

(6) If the question is to be submitted at a statewide primary or general election, the petitions shall be filed with the clerk of the city or village not less than sixty days prior to the election. The provisions for the required number of signers and the form of petition shall be the same as for a special election. The clerk of the city or village shall verify the signatures on the petitions with the voter registration records in the office of the county clerk or election commissioner. During the ten-day period while the petitions are being checked, no signatures shall be withdrawn and no signatures shall be added.

If the clerk of the city or village finds the petitions to be valid, he or she shall, not less than fifty days prior to the statewide primary or general election, give notice in writing to the county clerk or election commissioner that the question is to be submitted at the time of the statewide primary or general election. The election notices, issuing of the official ballots on election day, issuing of the ballots for early voting, and counting and canvassing of the ballots shall be conducted by the county clerk or election commissioner as provided in the Election Act and the official results certified to the clerk of the city or village.

(7) An election may not be held in the same city or village under this section more often than once every twenty-three months. Subdivision (5)(e) of section 53-124 is not subject to this section.

Source: Laws 1935, c. 116, § 48, p. 403; C.S.Supp.,1941, § 53-348; R.S.1943, § 53-122; Laws 1963, c. 309, § 1, p. 911; Laws 1963, c. 310, § 2, p. 923; Laws 1969, c. 439, § 1, p. 1469; Laws 1973, LB 556, § 1; Laws 1977, LB 40, § 311; Laws 1984, LB 920, § 43; Laws 1988, LB 1089, § 7; Laws 1989, LB 781, § 5; Laws 1991, LB 344, § 15; Laws 1993, LB 183, § 8; Laws 1994, LB 76, § 570; Laws 1999, LB 267, § 6; Laws 2001, LB 278, § 2; Laws 2004, LB 485, § 8; Laws 2005, LB 98, § 34.

Cross References

Election Act, see section 32-101.

53-123 Licenses; types.

Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; and (14) microdistillery license.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c.

332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5.

53-123.04 Retail license; rights of licensee; sampling; removal of unsealed bottle of wine; conditions.

(1) A retail license shall allow the licensee to sell and offer for sale at retail either in the original package or otherwise, as prescribed in the license, on the premises specified in the license or on the premises where catering is occurring, alcoholic liquor or beer for use or consumption but not for resale in any form except as provided in section 53-175.

(2) Nothing in the Nebraska Liquor Control Act shall prohibit a holder of a Class D license from allowing the sampling of tax-paid wine for consumption on the premises by such licensee or his or her employees in cooperation with a licensed wholesaler in the manner prescribed by the commission.

(3)(a) A restaurant holding a license to sell alcoholic liquor at retail for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased a full-course meal and consumed a portion of the bottle of wine with such full-course meal on the licensed premises. The licensee or his or her agent shall (i) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (ii) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine and the full-course meal.

(b) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) For purposes of this subsection, full-course meal means a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1(4), p. 617; Laws 1947, c. 188, § 1(4), p. 622; Laws 1965, c. 318, § 5, p. 892; Laws 1973, LB 111, § 3; Laws 1978, LB 386, § 3; Laws 1988, LB 1089, § 9; Laws 1989, LB 441, § 3; Laws 1989, LB 154, § 2; Laws 1991, LB 344, § 20; Laws 1993, LB 53, § 2; Laws 1994, LB 859, § 4; Laws 2001, LB 278, § 3; Laws 2004, LB 485, § 12; Laws 2006, LB 562, § 2.

53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.

(1) A farm winery license shall entitle the holder to:

(a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;

(b) Sell wines produced at the farm winery at retail for consumption on the premises;

(c)(i) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (A) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (B) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine.

(ii) If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk;

(d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;

(e) Allow sampling of the wine at the farm winery and at one branch outlet in the state in reasonable amounts;

(f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008; and

(g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery.

(2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.

(3) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.

(4) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

Source: Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2.
Effective date July 18, 2008.

53-123.13 Farm winery; waiver of requirement; when; conditions.

(1) If the operator of a farm winery is unable to produce or purchase seventy-five percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five-percent requirement prescribed in subdivision (31) of section 53-103 for one year.

(2) It shall be within the discretion of the commission to waive the seventy-five-percent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.

(3) If the operator of a farm winery is granted a waiver, any product purchased as concentrated juice from grapes or other fruits from outside of Nebraska, when reconstituted from concentrate, may not exceed in total volume along with other products purchased the total percentage allowed by the waiver.

(4) Any product purchased under the waiver or as part of the twenty-five percent of allowable product purchased that is not Nebraska-grown for the production of wine shall not exceed the twenty-five percent volume allowed under state law if made from concentrated grapes or other fruit, when reconstituted. The concentrate shall not be reduced to less than twenty-two degrees Brix in accordance with 27 C.F.R. 24.180.

Source: Laws 1985, LB 279, § 6; Laws 1986, LB 871, § 2; Laws 1989, LB 441, § 5; Laws 1991, LB 344, § 24; Laws 1994, LB 859, § 5; Laws 2004, LB 485, § 13; Laws 2008, LB1103, § 3.
Effective date July 18, 2008.

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.

(1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in subdivision (11) of section 53-124. Until April 30, 2012, such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1.

53-123.16 Microdistillery license; rights of licensee.

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12 or a special designated license pursuant to section 53-124.11. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Source: Laws 2007, LB549, § 6.

53-124 Annual license fees; where paid.

At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in this section and, if the applicant is an individual, provide the applicant's social security number. The fees for annual licenses finally issued by the commission shall be as follows:

(1)(a) For a license to manufacture alcohol and spirits.....$1,000.00;

(b) For a license to operate a microdistillery.....$250.00;

(2) For a license to manufacture beer and wine or to operate a farm winery or craft brewery:

(a) Manufacture of beer, excluding beer produced by a craft brewery:

(i) 1 to 100 barrel daily capacity, or any part thereof.....$100.00

(ii) 100 to 150 barrel daily capacity.....200.00

(iii) 150 to 200 barrel daily capacity.....350.00

(iv) 200 to 300 barrel daily capacity.....500.00

(v) 300 to 400 barrel daily capacity.....650.00

(vi) 400 to 500 barrel daily capacity.....700.00

(vii) 500 barrel daily capacity, or more.....800.00;

(b) Operation of a craft brewery.....$250.00;

(c) Manufacture of wines.....$250.00;

(d) Operation of a farm winery.....$250.00.

For purposes of subdivision (2)(a) of this section, daily capacity shall mean the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars;

(3) Alcoholic liquor wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling alcoholic liquor, except beer and wines produced from farm wineries.....$750.00;

(4) Beer wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling beer only.....$500.00;

(5) For a retail license:

(a) Class A: Beer only except for craft breweries, for consumption on the premises, the sum of one hundred dollars;

(b) Class B: Beer only except for craft breweries, for consumption off the premises, sales in the original packages only, the sum of one hundred dollars;

(c) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only, the sum of three hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(d) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04, the sum of two hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets; and

(e) Class I: Alcoholic liquor, for consumption on the premises, the sum of two hundred fifty dollars, except for farm winery, microdistillery, or craft brewery sales outlets.

All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village;

(6) For a railroad license.....$100.00 and $1.00 for each duplicate;

(7) For a boat license.....$50.00;

(8) For a nonbeverage user's license:

Class 1.....$5.00

Class 2.....25.00

Class 3.....50.00

Class 4.....100.00

Class 5.....250.00;

(9) For an airline license.....$100.00 and $1.00 for each duplicate;

(10) For a shipping license, except a shipping license issued pursuant to subsection (4) of section 53-123.15.....$200.00; and

(11) For a shipping license issued pursuant to subsection (4) of section 53-123.15.....$500.00.

The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this section, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Source: Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 183, § 9; Laws 1993, LB 53, § 3; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7.

53-124.11 Special designated license; issuance; procedure; fee.

(1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and

which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.

(1) The holder of a license to sell alcoholic liquor at retail issued under subdivision (5) of section 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or incorporated village in which such applicant is located or (b) if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall enclose with such notice one copy of the application. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if

such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9.

53-129 Retail, craft brewery, and microdistillery licenses; premises to which applicable.

Retail, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application, and only one location shall be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the state registration fee prescribed in section 53-131.

Source: Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10.

53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county.

(1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes;

(b) The license fee if under section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The state registration fee in the sum of forty-five dollars.

(2) The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or village in which such license is sought or (b) if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall enclose one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receiving such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11.

53-132 Retail, craft brewery, or microdistillery license; commission; duties.

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

(a) The recommendation of the local governing body;

(b) The existence of a citizens' protest made in accordance with section 53-133;

(c) The existing population of the city, village, or county and its projected growth;

(d) The nature of the neighborhood or community of the location of the proposed licensed premises;

(e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subdivision (5) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

Source: Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 242, § 45, p. 856; Laws 1957, c. 228, § 3, p. 780; Laws 1959, c. 246, § 1, p. 845; Laws 1959, c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 781, § 10; Laws 1989, LB 780, § 9; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12.

53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.

(1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued; or

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed to the applicant, the local governing body, and each individual protesting a license pursuant to subdivision (1)(b) of this section, by certified mail, return receipt requested, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application.

Source: Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13.

53-134 Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.

The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regula-

tion adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in section 53-124 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Source: Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws

1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 550, § 3; Laws 1988, LB 352, § 92; Laws 1988, LB 1089, § 15; Laws 1989, LB 781, § 12; Laws 1989, LB 780, § 10; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14.

53-134.03 Retail, craft brewery, and microdistillery licenses; regulation by cities and villages.

The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, or microdistillery licensees carried on within the corporate limits of the city or village.

Source: Laws 1935, c. 116, § 104, p. 429; C.S.Supp.,1941, § 53-3,104; R.S.1943, § 53-147; Laws 1980, LB 848, § 11; Laws 1989, LB 781, § 14; R.S.Supp.,1990, § 53-147; Laws 1991, LB 344, § 38; Laws 1993, LB 183, § 16; Laws 1999, LB 267, § 12; Laws 2004, LB 485, § 24; Laws 2007, LB549, § 15.

(f) TAX

53-163 Commission; rounding of amounts on returns or reports; authorized.

When the commission finds that the administration of the state alcohol excise tax laws might be more efficiently and economically conducted, the commission may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts shall be rounded to the nearest dollar with amounts ending in fifty cents or more rounded to the next highest dollar.

Source: Laws 2007, LB578, § 2.

53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.

Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c) Farm winery producers shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for

sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under section 53-124, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this

section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Source: Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16.

(g) MANUFACTURER'S AND WHOLESALER'S RECORD AND REPORT

53-165 Manufacturer and wholesaler; monthly report to commission of manufacture and sale; manufacturer or shipper; certification; record keeping.

(1) Every manufacturer and wholesaler shall, between the first and fifteenth day of each calendar month, make return to the commission of all alcoholic liquor manufactured and sold by such manufacturer or wholesaler in the course of such business during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commission and shall contain such other information as the commission may reasonably require.

(2) Every manufacturer or shipper of beer on filing notice of intention to commence or continue business pursuant to section 53-130.01 shall certify that such manufacturer or shipper will keep or cause to be kept books and records and make reports in the manner and for the purposes specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, and that such manufacturer or shipper will in all respects faithfully comply with all of the requirements of the laws of this state and the rules and regulations of the commission relating to the manufacture and shipping to licensed retail beer dealers in this state.

(3) Each manufacturer and wholesaler shall keep complete and accurate records of all sales of liquor, wine, or beer and complete and accurate records of all such alcoholic liquor produced, manufactured, compounded, or imported.

Source: Laws 1935, c. 116, § 55, p. 408; C.S.Supp.,1941, § 53-355; R.S.1943, § 53-165; Laws 1991, LB 344, § 50; Laws 2006, LB 1003, § 4.

(h) KEG SALES

53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit.

(1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing beer for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

Source: Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10.

53-167.04 Repealed. Laws 2006, LB 562, § 8.

(i) PROHIBITED ACTS

53-169 Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations.

(1) No manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 279, § 11;

Laws 1985, LB 183, § 5; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17.

53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exceptions.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 unless such interest in the licensed wholesaler was acquired or became effective prior to January 1, 2007.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of an alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3.

Note: This section was amended by Laws 2007, LB578. The court declared the section as amended was unconstitutional in Southern Wine & Spirits of America, Inc. v. Heineman, 534 F.Supp.2d 1001 (D.Neb. 2008).

53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations.

No person licensed as a manufacturer or wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall

not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18.

53-180.02 Minor; prohibited acts; exception; governing bodies; powers.

Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Source: Laws 1951, c. 174, § 1(3), p. 664; Laws 1955, c. 205, § 1, p. 584; Laws 1957, c. 233, § 1, p. 792; Laws 1965, c. 323, § 1, p. 915; Laws 1967, c. 337, § 1, p. 904; Laws 1969, c. 440, § 2, p. 1473; Laws 1980, LB 221, § 3; Laws 1980, LB 848, § 18; Laws 1981, LB 124, § 4; Laws 1984, LB 56, § 2; Laws 1991, LB 344, § 62; Laws 2001, LB 114, § 4; Laws 2007, LB573, § 11.

53-188 Governmental subdivision under prohibition; effect on licenses.

No person shall operate a craft brewery or microdistillery or sell alcoholic liquor at retail, and the commission shall not grant, issue, or cause to be granted or issued any license to operate a craft brewery or microdistillery or to sell alcoholic liquor at retail, within the limits of any governmental subdivision of this state while a prohibition against such sales arising under sections 53-121 and 53-122 or otherwise as provided in the Nebraska Liquor Control Act is in effect, and any such license granted or issued in violation thereof shall be void. This section shall not prohibit the issuance of a manufacturer's or wholesale license in accordance with law by the commission in such prohibited territory.

Source: Laws 1935, c. 116, § 59, p. 408; C.S.Supp.,1941, § 53-359; R.S.1943, § 53-188; Laws 1988, LB 1089, § 28; Laws 1991, LB 344, § 68; Laws 1996, LB 750, § 13; Laws 2007, LB549, § 19.

(k) PROSECUTION AND ENFORCEMENT

53-1,115 Proceedings before commission; service upon parties; rehearings; costs.

(1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for such service. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service upon such party.

(2) Within thirty days after the service of any rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as provided in section 53-1,116.

(3) Upon final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing referred to in subsection (2) of this section shall be granted by the commission on application of any one party.

(4) For purposes of this section, party of record means:

(a) In the case of an administrative proceeding before the commission on the application for a retail, craft brewery, or microdistillery license:

(i) The applicant;

(ii) Each individual protesting the issuance of such license pursuant to subdivision (1)(b) of section 53-133;

(iii) The local governing body if it is entering an appearance to protest the issuance of the license or if it is requesting a hearing pursuant to subdivision (1)(c) of section 53-133; and

(iv) The commission;

(b) In the case of an administrative proceeding before a local governing body to cancel or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The local governing body; and

(c) In the case of an administrative proceeding before the commission to suspend, cancel, or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The commission.

Source: Laws 1989, LB 781, § 15; Laws 1993, LB 183, § 17; Laws 1999, LB 267, § 16; Laws 2004, LB 485, § 30; Laws 2007, LB549, § 20.

ARTICLE 2
BEER DISTRIBUTION

Section
53-208. Good faith, defined.

53-208 Good faith, defined.

Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Source: Laws 1989, LB 371, § 8; Laws 2005, LB 570, § 2.

ARTICLE 3
NEBRASKA GRAPE AND WINERY BOARD

Section
53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7.

Cross References

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

ARTICLE 4
MINOR ALCOHOLIC LIQUOR LIABILITY ACT

Section
53-401. Act, how cited.
53-402. Purposes of act.
53-403. Terms, defined.
53-404. Cause of action authorized.
53-405. Defense.
53-406. Limitation on cause of action.
53-407. Damages.
53-408. Statute of limitation.
53-409. Effect of settlement and release; offset; joint and several liability; right of contribution.

53-401 Act, how cited.

Sections 53-401 to 53-409 shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

Source: Laws 2007, LB573, § 1.

53-402 Purposes of act.

The purposes of the Minor Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages and to establish a legal basis for obtaining compensation for persons suffering damages as a result of provision or service of alcoholic liquor to minors under circumstances described in the act.

Source: Laws 2007, LB573, § 2.

53-403 Terms, defined.

For purposes of the Minor Alcoholic Liquor Liability Act:

(1) Alcoholic liquor has the definition found in section 53-103;

(2) Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor so as to diminish the person's ability to think and act in the manner of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances;

(3) Licensee means a person holding a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail;

(4) Minor has the definition found in section 53-103;

(5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;

(6) Service of alcoholic liquor means any sale, gift, or other manner of conveying possession of alcoholic liquor; and

(7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

Source: Laws 2007, LB573, § 3.

Cross References

Nebraska Liquor Control Act, see section 53-101.

53-404 Cause of action authorized.

Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

(1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;

(2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Source: Laws 2007, LB573, § 4.

53-405 Defense.

It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

Source: Laws 2007, LB573, § 5.

53-406 Limitation on cause of action.

No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Source: Laws 2007, LB573, § 6.

53-407 Damages.

In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

Source: Laws 2007, LB573, § 7.

53-408 Statute of limitation.

Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

Source: Laws 2007, LB573, § 8.

53-409 Effect of settlement and release; offset; joint and several liability; right of contribution.

(1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

(2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Source: Laws 2007, LB573, § 9.

CHAPTER 54
LIVESTOCK

Article.
1. Livestock Brand Act. 54-191 to 54-1,108.
3. Herd Laws. 54-311.
4. Estrays and Trespassing Animals. 54-401, 54-416.
5. Food Supply Animal Veterinary Incentive Program Act. 54-501 to 54-508.
6. Dogs and Cats.
   (a) Dogs. 54-603 to 54-616.
   (b) Dangerous Dogs. 54-617 to 54-624.
   (c) Commercial Dog and Cat Operator Inspection Act. 54-625 to 54-643.
7. Protection of Health.
   (a) General Powers and Duties of Department of Agriculture. 54-701.03 to 54-705.
   (b) Bovine Tuberculosis Act. 54-706 to 54-722.
   (d) General Provisions. 54-744.01 to 54-753.06.
   (i) Exotic Animal Auctions and Swap Meets. 54-7,105 to 54-7,108.
8. Commercial Feed. 54-857.
24. Livestock Waste Management Act. 54-2416 to 54-2438.
26. Competitive Livestock Markets Act. 54-2601 to 54-2627.01.

ARTICLE 1
LIVESTOCK BRAND ACT

Section
54-191. Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.
54-192. Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.
54-194. Documents; signature and seal requirements.
54-199. Livestock brand; application; fee; requirements; issuance.
54-1,108. Brand inspections; when; fees; reinspection; when.

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

The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor. At least three appointed members shall be active cattlepersons and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee. The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area. The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A member may be reelected to serve as chairperson or vice-chairperson. The Secretary of State shall remain a member of the brand committee in the capacity as chairperson of the brand committee until a chairperson is elected as provided in this section. The terms of the members shall be four-year, staggered

terms. At the expiration of the term of an appointed member, the Governor shall appoint a successor. The members of the brand committee serving on August 28, 2007, shall be considered appointed to serve the remainder of their terms. The Governor shall complete any additional appointment of members as necessary to fulfill the membership of the brand committee as prescribed by Laws 2007, LB 422, on or before August 28, 2007. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be paid their actual and necessary traveling expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

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

Source: Laws 1999, LB 778, § 22; Laws 2004, LB 884, § 26; Laws 2007, LB422, § 1.

54-192 Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.

(1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

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

vacation, or official business away from the committee's headquarters, the assistant director shall have similar authority as outlined in this section for the director.

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

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

Source: Laws 1999, LB 778, § 23; Laws 2007, LB422, § 2.

Cross References

Motor vehicles of deputized employees exempt from state marking requirements, see section 81-1021.

54-194 Documents; signature and seal requirements.

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

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

54-199 Livestock brand; application; fee; requirements; issuance.

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

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

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

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

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

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

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

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

(4) The brand committee may, by rule and regulation, provide for the recording and use of brands by electronic device or other nonvisual method of livestock identification. Any such method of livestock identification shall be approved as a brand only if it functions as a means of identifying ownership of livestock so branded that is equal to, or superior to, visual methods of livestock branding. Before approving any nonvisual method of branding, the brand committee shall consider the degree to which such method may be susceptible to error, failure, or fraudulent alteration. Any rule or regulation shall be adopted only after public hearing conducted in compliance with the Administrative Procedure Act.

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

Source: Laws 1999, LB 778, § 30; Laws 2000, LB 213, § 5; Laws 2002, LB 589, § 3; Laws 2005, LB 441, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

54-1,108 Brand inspections; when; fees; reinspection; when.

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2) A fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or inspected within the brand inspection area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from

the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. If estray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

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

Source: Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2.

ARTICLE 3

HERD LAWS

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

54-311 Wells and pitfalls; prohibited acts.

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

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

Cross References

Abandoned water wells:
Duty of licensed water well contractor to plug, see section 46-1234.
Duty of owner to decommission and notify Department of Natural Resources, see section 46-602.
Penalty for failure to decommission, see section 46-1240.
Standards for decommissioning, see section 46-1227.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

ARTICLE 4

ESTRAYS AND TRESPASSING ANIMALS

Section
54-401. Estrays, trespassing animals; damages; liability.
54-416. Feral swine; applicability of sections; destruction; when.

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

The owners of cattle, horses, mules, swine, sheep, and goats in this state are liable for all damages done by such stock upon the lands of another in this state as provided by section 54-402 if the damages to the lands are not the result of

negligent or willful damage to the division fence by the person claiming damages to the land.

Source: Laws 1871, § 1, p. 120; R.S.1913, § 109; C.S.1922, § 117; C.S. 1929, § 54-401; R.S.1943, § 54-401; Laws 1983, LB 149, § 1; Laws 1996, LB 1174, § 5; Laws 2008, LB925, § 1.
Effective date July 18, 2008.

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

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

Source: Laws 2005, LB 20, § 2.

ARTICLE 5

FOOD SUPPLY ANIMAL VETERINARY INCENTIVE PROGRAM ACT

Section
54-501. Act, how cited.
54-502. Terms, defined.
54-503. Program; participation; incentives.
54-504. Applicant; eligibility; preference.
54-505. Distribution of program funds.
54-506. Release from program; when; recovery of payments.
54-507. Food Supply Animal Veterinary Incentive Fund; created; use; investment.
54-508. Rules and regulations.

54-501 Act, how cited.

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

Source: Laws 2008, LB1172, § 1.
Effective date July 18, 2008.

54-502 Terms, defined.

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

(1) Department means the Department of Agriculture;

(2) Food supply animal includes cattle, hogs, sheep, goats, and poultry;

(3) Food supply animal veterinarian means a veterinarian who is engaged in general or food supply animal practice as his or her primary focus of practice and who has a substantial portion of his or her practice devoted to food supply animal veterinary medicine;

(4) Program means the Food Supply Animal Veterinary Incentive Program; and

(5) Rural mixed animal veterinary practice means practice as a food supply animal veterinarian in a rural area and a substantial portion of the practice involves food supply animal veterinary practice.

Source: Laws 2008, LB1172, § 2.
Effective date July 18, 2008.

54-503 Program; participation; incentives.

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

Source: Laws 2008, LB1172, § 3.
Effective date July 18, 2008.

54-504 Applicant; eligibility; preference.

(1) To be eligible for funds under the program, an applicant shall:

(a) Be a graduate of an approved veterinary medical school;

(b) Be licensed to practice veterinary medicine in this state;

(c) Enter into a contract with the department to provide full-time veterinary medicine services as a food supply animal veterinarian in a food supply animal veterinary practice or in a rural mixed animal veterinary practice for four years in one or more communities approved by the department; and

(d) Be accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services to provide services relating to food supply animals by the end of the first year of service.

(2) The department shall give preference for approving communities for purposes of subdivision (1)(c) of this section to communities located in areas designated by the department as shortage areas for food supply animal veterinary medical services. In designating such areas, the department may initially utilize shortage areas as designated by the American Veterinary Medical Association on July 18, 2008, and may revise designations as necessary and appropriate to achieve the purposes of the program.

Source: Laws 2008, LB1172, § 4.
Effective date July 18, 2008.

54-505 Distribution of program funds.

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

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

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

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

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

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

Source: Laws 2008, LB1172, § 5.
Effective date July 18, 2008.

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

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

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

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

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

(d) The veterinarian dies.

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

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

(3) The State of Nebraska shall be released from any further obligation under the Food Supply Animal Veterinary Incentive Program Act or any contract entered into with a veterinarian under the act if the veterinarian is released from the program pursuant to this section.

Source: Laws 2008, LB1172, § 6.
Effective date July 18, 2008.

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

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

Source: Laws 2008, LB1172, § 7.
Effective date July 18, 2008.

Cross References

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

54-508 Rules and regulations.

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

Source: Laws 2008, LB1172, § 8.
Effective date July 18, 2008.

ARTICLE 6
DOGS AND CATS

(a) DOGS

(b) DANGEROUS DOGS

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

(a) DOGS

54-603 Dogs; license tax; amount; service animal; license.

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

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

be liable for the payment of a license tax as prescribed by local ordinances or resolutions.

Source: Laws 1877, § 3, p. 156; R.S.1913, § 174; C.S.1922, § 171; C.S. 1929, § 54-603; R.S.1943, § 54-603; Laws 1976, LB 515, § 2; Laws 1997, LB 814, § 7; Laws 2008, LB806, § 13.
Effective date July 18, 2008.

Cross References

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

54-607 Dogs; running at large; penalty.

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

Source: Laws 1877, § 7, p. 157; R.S.1913, § 178; C.S.1922, § 175; C.S. 1929, § 54-607; Laws 2008, LB1055, § 8.
Effective date April 22, 2008.

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

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

Source: Laws 1961, c. 268, § 2, p. 787; Laws 1988, LB 630, § 1; Laws 2008, LB1055, § 9.
Effective date April 22, 2008.

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

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

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

Source: Laws 1961, c. 268, § 4, p. 787; Laws 1988, LB 801, § 1; Laws 1988, LB 630, § 3; Laws 1993, LB 121, § 338; Laws 2008, LB1055, § 10.
Effective date April 22, 2008.

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

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

Source: Laws 1961, c. 268, § 5, p. 787; Laws 1988, LB 801, § 2; Laws 1988, LB 630, § 4; Laws 2008, LB1055, § 11.
Effective date April 22, 2008.

54-613 Violations; penalties.

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

Source: Laws 1961, c. 268, § 7, p. 788; Laws 1977, LB 39, § 20; Laws 1988, LB 801, § 3; Laws 1988, LB 630, § 5; Laws 2008, LB1055, § 12.
Effective date April 22, 2008.

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

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

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

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

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB806, section 14, with LB1055, section 13, to reflect all amendments.

Note: Changes made by LB1055 became effective April 22, 2008. Changes made by LB806 became effective July 18, 2008.

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

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

Source: Laws 1963, c. 104, § 2, p. 429; Laws 2008, LB1055, § 14.
Effective date April 22, 2008.

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

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

Source: Laws 1963, c. 104, § 3, p. 430; Laws 2008, LB1055, § 15. Effective date April 22, 2008.

(b) DANGEROUS DOGS

54-617 Dangerous dogs; terms, defined.

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

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

(2) Animal control officer means any individual employed, appointed, or authorized by an animal control authority for the purpose of aiding in the enforcement of sections 54-617 to 54-624 or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

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

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

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

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

(5) Medical treatment means treatment administered by a physician or other licensed health care professional;

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

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

Source: Laws 1989, LB 208, § 1; Laws 2008, LB1055, § 16.
Effective date April 22, 2008.

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

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

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

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

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

Source: Laws 1989, LB 208, § 2; Laws 2008, LB1055, § 17.
Effective date April 22, 2008.

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

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

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

Source: Laws 1989, LB 208, § 3; Laws 2008, LB1055, § 18.
Effective date April 22, 2008.

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

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

Source: Laws 1989, LB 208, § 4; Laws 2008, LB1055, § 19.
Effective date April 22, 2008.

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

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

(2) If a dangerous dog of an owner with a prior conviction under sections 54-617 to 54-624 attacks or bites a human being or domestic animal, the owner shall be guilty of a Class IIIA misdemeanor. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

Source: Laws 1989, LB 208, § 7; Laws 2008, LB1055, § 20.
Effective date April 22, 2008.

54-623.01 County; designate animal control authority.

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

Source: Laws 2008, LB1055, § 22.
Effective date April 22, 2008.

54-624 Dangerous dogs; local laws or ordinances.

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

Source: Laws 1989, LB 208, § 8; Laws 2008, LB1055, § 21.
Effective date April 22, 2008.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625 Act, how cited.

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

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1.

54-627 License requirements; fees; renewal.

(1) A person shall not operate as a commercial breeder, a dealer, a boarding kennel, an animal control facility, or an animal shelter unless the person obtains the appropriate license as a commercial breeder, dealer, boarding kennel, animal control facility, or animal shelter. A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

(i) Ten or fewer dogs or cats, one hundred fifty dollars;

(ii) Eleven to fifty dogs or cats, two hundred dollars; and

(iii) More than fifty dogs or cats, two hundred fifty dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

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

(d) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee shall not exceed three hundred fifty dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department at least thirty days prior to April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility or animal shelter shall be renewed by filing with the department at least thirty days prior to October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in an additional fee of twenty dollars required upon application to renew such license.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2.

54-628 Inspection program.

The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health. When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice. The premises of the applicant or licensee shall be open for inspection. The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any dog or cat thereon or any sanitation, housing, or other condition or practice that is in violation of the act.

Source: Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3.

54-629 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The

department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Source: Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4.

54-630 Application; denial; appeal.

Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

54-631 Licensee; duties; disciplinary actions.

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

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

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

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

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

(3) A license may be suspended after:

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

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

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

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

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

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

(5) A license may be revoked after:

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

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

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

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

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

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

Source: Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.

54-632 Notice or order; service requirements; hearing; appeal.

(1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the licensee or on the person authorized by the licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the licensee or the person authorized by the licensee to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the conditions set out in the order of the director provided in section 54-631 shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to

subsection (5) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee waives the right to a hearing if such licensee does not attend the hearing at the time and place set forth in the notice described in subsection (3) of this section, without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee shows the director that the licensee had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing.

(6) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

54-633 Enforcement powers; administrative fine.

(1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director or an offense against animals observed by an inspector in the course of performing an inspection under the act poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may direct

an inspector to impound the dogs or cats pursuant to sections 28-1011 and 28-1012 or may request any other law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012. The department shall cooperate and coordinate with law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded by the department pursuant to this section.

(3) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

Source: Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8.

54-642 Department; submit report of costs and revenue.

On or before November 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

Source: Laws 2006, LB 856, § 16.

54-643 Administrative fines; disposition; lien; collection.

(1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2007, LB12, § 9.

ARTICLE 7

PROTECTION OF HEALTH

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

54-701.03 Terms, defined.

For purposes of sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108:

(1) Accredited veterinarian means a veterinarian approved by the deputy administrator of the United States Department of Agriculture in accordance with 9 C.F.R. part 161, as such regulation existed on January 1, 2006;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) Bureau of Animal Industry means the Bureau of Animal Industry of the Department of Agriculture of the State of Nebraska and includes the State Veterinarian, deputy state veterinarian, veterinary field officers, livestock inspectors, investigators, and other employees of the bureau;

(4) Dangerous disease means a disease transmissible to and among livestock which has the potential for rapid spread, serious economic impact or serious threat to livestock health, and is of major importance in the trade of livestock and livestock products;

(5) Department means the Department of Agriculture of the State of Nebraska;

(6) Director means the Director of Agriculture of the State of Nebraska or his or her designee;

(7) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area;

(8) Exotic animal means any animal which is not commonly sold through licensed livestock auction markets pursuant to the Livestock Auction Market Act. Such animals shall include, but not be limited to, miniature cattle, miniature horses, miniature donkeys, Barbary sheep, Dall's sheep, alpacas, llamas, pot-bellied pigs, and small mammals, with the exception of cats of the Felis domesticus species and dogs of the Canis familiaris species. The term also includes birds and poultry. The term does not include beef and dairy cattle, calves, swine, bison, sheep sold for wool or food, goats sold for dairy, food, or fiber, and domesticated cervine animals;

(9) Exotic animal auction or swap meet means any event or location as defined in rules and regulations of the department, other than a livestock auction market as defined in section 54-1158, where (a) an exotic animal is purchased, sold, traded, bartered, given away, or otherwise transferred, (b) an offer to purchase an exotic animal is made, or (c) an exotic animal is offered to be sold, traded, bartered, given away, or otherwise transferred;

(10) Exotic animal auction or swap meet organizer means a person in charge, as identified by rule and regulation of the department, of organizing an exotic animal auction or swap meet event, and may include any person who: (a) Arranges events for third parties to have private sales or trades of exotic animals; (b) organizes or coordinates exotic animal auctions or swap meets; (c)

leases out areas for exotic animal auctions or swap meets; or (d) provides or coordinates other similar arrangements involving exotic animals;

(11) Exposed means being part of a herd which contains or has contained an animal infected with a disease agent which affects livestock or having had a reasonable opportunity to come in contact with an infective disease agent which affects livestock;

(12) Herd means any group of livestock maintained on common ground for any purpose or two or more groups of livestock under common ownership or supervision geographically separated but which have an interchange of livestock without regard to health status;

(13) Livestock means cattle, swine, sheep, horses, mules, goats, domesticated cervine animals, ratite birds, and poultry;

(14) Poultry means domesticated birds that serve as a source of eggs or meat and includes, but is not limited to, chickens, turkeys, ducks, and geese;

(15) Program disease means a livestock disease for which specific legislation exists for disease control or eradication;

(16) Quarantine means restriction of (a) movement imposed by the department on an animal, group of animals, or herd of animals because of infection with, or exposure to, a disease agent which affects livestock and (b) use of equipment, facilities, land, buildings, and enclosures which are used or have been used by animals infected with, or suspected of being infected with, a disease agent which affects livestock;

(17) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary;

(18) Sale means a sale, lease, loan, trade, barter, or gift;

(19) Surveillance means the collection and testing of livestock blood, tissue, hair, body fluids, discharges, excrements, or other samples done in a herd or randomly selected livestock to determine the presence or incidence of disease in the state or area of the state; and

(20) Veterinarian means an individual who is a graduate of an accredited college of veterinary medicine.

Source: Laws 1993, LB 267, § 2; Laws 1995, LB 718, § 6; Laws 1999, LB 404, § 25; Laws 1999, LB 870, § 2; Laws 2001, LB 438, § 3; Laws 2006, LB 856, § 17.

Cross References

Livestock Auction Market Act, see section 54-1156.

54-702 Voluntary national uniform system of animal identification; department; powers.

The Department of Agriculture may, within the framework and consistent with standards of the National Animal Identification System, cooperate and coordinate with the Animal and Plant Health Inspection Service of the United States Department of Agriculture and other local, state, and national agencies and organizations, public or private, to define premises where livestock are located, to develop a voluntary premises registration system for Nebraska, and to implement other state components of a voluntary national uniform system of animal identification. If the department implements such a system, the department shall also develop and facilitate a process of withdrawal of registration that would remove premises identifiers from its data base. Written confirmation

shall be sent upon withdrawal of registration from the department's data base. The department shall cooperate with the United States Department of Agriculture in the process to withdraw registrations.

Source: Laws 2006, LB 856, § 28; Laws 2008, LB632, § 1.
Effective date July 18, 2008.

54-702.01 Uniform system of animal identification; information; restrictions on disclosure; violations; penalty.

(1) Any information that a person provides to the Department of Agriculture for purposes of premises registration or otherwise for voluntary participation in or compliance with a uniform system of animal identification shall not be subject to public inspection pursuant to sections 84-712 to 84-712.09. The department and its employees or agents shall not disclose such information to any other person or agency except when such disclosure:

(a) Is authorized by the person who provides the information; or

(b) Is necessary for purposes of disease surveillance or to carry out epidemiological investigations related to incidences of animal disease.

(2) The department may disclose information as authorized by this section subject to any confidentiality requirements that the department determines are appropriate under the circumstances.

(3) Any person who violates this section shall be subject to prosecution and penalty for official misconduct pursuant to section 28-924.

(4) Nothing in this section shall be construed to prohibit the department from discussing, reporting, or otherwise disclosing the progress or results of disease surveillance activities or epidemiological investigations related to incidences of animal disease.

Source: Laws 2006, LB 856, § 29.

54-703 Prevention of diseases; enforcement of sections; inspections; rules and regulations.

(1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Source: Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224.

54-704 Prevention of diseases; federal agents; powers.

Any veterinary inspector or agent of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, who has been officially assigned by the United States Department of Agriculture for service in Nebraska may be officially authorized by the Department of Agriculture to perform and exercise such powers and duties as may be prescribed by the department and when so authorized shall have and exercise all rights and powers vested by sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 in agents and representatives in the regular employ of the department.

Source: Laws 1927, c. 12, art. I, § 4, p. 81; C.S.1929, § 54-904; R.S.1943, § 54-704; Laws 1993, LB 267, § 5; Laws 2001, LB 438, § 5; Laws 2006, LB 856, § 19.

54-705 Prevention of diseases; orders of department; enforcement.

The Department of Agriculture or any officer, agent, employee, or appointee thereof may call upon any sheriff, deputy sheriff, or other police officer to execute the orders of the department, and the officer shall obey the orders of the department. The officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor by the county. Any officer may arrest and take before the county judge of the county any person found violating any of the provisions of sections 54-701 to 54-753.05 and 54-7,105 to 54-7,108, and such officer shall immediately notify the county attorney of such arrest. The county attorney shall prosecute the person so offending according to law.

Source: Laws 1927, c. 12, art. I, § 5, p. 82; C.S.1929, § 54-905; R.S.1943, § 54-705; Laws 1972, LB 1032, § 261; Laws 1988, LB 1030, § 45; Laws 1993, LB 267, § 6; Laws 2001, LB 438, § 6; Laws 2006, LB 856, § 20.

(b) BOVINE TUBERCULOSIS ACT

54-706 Repealed. Laws 2007, LB 110, § 20.

54-706.01 Act, how cited.

Sections 54-706.01 to 54-706.17 and the provisions of the Code of Federal Regulations and Bovine Tuberculosis Eradication Uniform Methods and Rules adopted by reference in section 54-706.04 shall be known and may be cited as the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 1.

54-706.02 Purpose of act.

The purpose of the Bovine Tuberculosis Act is to maintain Nebraska's status as a tuberculosis accredited free state through the use of monitoring and surveillance to maintain tuberculosis-free conditions within the state.

Source: Laws 2007, LB110, § 2.

54-706.03 Definitions.

For purposes of the Bovine Tuberculosis Act, the definitions found in the federal regulations and rules adopted by reference in section 54-706.04 shall be used and:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of APHIS to perform functions required by cooperative state-federal animal disease control and eradication programs;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(4) Bovine means cattle and bison;

(5) Department means the Department of Agriculture or its authorized designee;

(6) Designated accredited veterinarian means an accredited veterinarian trained and approved to conduct specific bovine tuberculosis tests such as the bovine interferon gamma assay, other bovine tuberculosis program activities, or both; and

(7) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the Director of Agriculture.

Source: Laws 2007, LB110, § 3.

54-706.04 Federal regulations adopted; inconsistency; how treated; filing required.

(1) The Legislature hereby adopts by reference 9 C.F.R. part 77, except requirements relating to captive cervids, and the Bovine Tuberculosis Eradication Uniform Methods and Rules published by APHIS in effect on February 15, 2007, as part of the Bovine Tuberculosis Act. If there is an inconsistency between such federal regulations and the Bovine Tuberculosis Act or between such Uniform Methods and Rules and the Bovine Tuberculosis Act, the requirements of the Bovine Tuberculosis Act shall control. If there is an inconsistency between such federal regulations and the Uniform Methods and Rules, the requirements of the federal regulations shall control, except in the definition of livestock where the definition in the Uniform Methods and Rules shall control.

(2) Certified copies of the portion of the federal regulations and the rules adopted by reference pursuant to this section shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Source: Laws 2007, LB110, § 4.

54-706.05 Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.

(1) The Bovine Tuberculosis Act shall be administered and enforced by the Bureau of Animal Industry of the department.

(2) In administering the act, the department may cooperate and contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act. The department may also cooperate with the APHIS in (a) the control and eradication of bovine tuberculosis in this state and (b) recommending where and how any available federal funds and state personnel and materials are allocated for the purpose of bovine tuberculosis control and eradication.

(3) In administering the act, the department shall have access to all livestock dealer and livestock auction market records to facilitate the traceback of affected, exposed, suspect, or reactor animals to the herd of origin or other point of original infection. Such records shall be maintained for a minimum of five years and shall be made available to the State Veterinarian upon request during normal business hours.

(4) For purposes of making inspections, conducting tests, or both, agents and employees of the department shall have access to any premises where animals may be located. Any person who interferes or obstructs any agent or employee of the department in such work or attempts to obstruct or prevent by force the carrying on of such inspection, testing, or both is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 5.

54-706.06 Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.

Any person who discovers, suspects, or has reason to believe that any animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with bovine tuberculosis shall immediately report such fact, belief, or suspicion to the State Veterinarian.

An owner or custodian of an animal exhibiting signs consistent with bovine tuberculosis shall submit such designated animal to be tested when ordered to do so by the State Veterinarian.

Source: Laws 2007, LB110, § 6.

54-706.07 Department; rules and regulations; tests; reports.

(1) The department by rule and regulation may prescribe the manner, method, and system of testing livestock or any other animal suspected of being affected with or exposed to M. bovis under a cooperative program.

(2) The department may also adopt and promulgate any other rules and regulations necessary to carry out the Bovine Tuberculosis Act.

(3) Accredited veterinarians are authorized to apply only the caudal fold tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the department or APHIS or by a designated accredited veterinarian. All tests are official tests and shall be reported to the State Veterinarian on an official bovine tuberculosis test chart. Such report shall include the official identification, age, sex, and breed of each animal and a record of all responses and test interpretations.

Source: Laws 2007, LB110, § 7.

54-706.08 Quarantine; epidemiologic investigation; prohibited acts; penalty.

(1) The State Veterinarian may immediately quarantine any animal and the premises on which such animal is located if bovine tuberculosis is suspected or has been diagnosed in an animal on such premises.

(2) Disclosure of bovine tuberculosis in any animal shall be followed by an epidemiologic investigation in accordance with the Bovine Tuberculosis Act.

(3) No person shall prevent the testing of or remove any animal which has been placed in quarantine pursuant to this section from the place of quarantine until such quarantine is released by the State Veterinarian, except authorized movement for slaughter or other movement as authorized by the State Veterinarian. Any person who violates this subsection is guilty of a Class II misdemeanor. Each animal moved, purchased, sold, traded, bartered, granted, loaned, or otherwise transferred in violation of this subsection is a separate violation.

Source: Laws 2007, LB110, § 8.

54-706.09 Cleaning and disinfection of affected premises.

(1) All premises that are determined by the State Veterinarian to constitute a health hazard to animals because of bovine tuberculosis shall be properly cleaned and disinfected in accordance with the Bovine Tuberculosis Act.

(2) The State Veterinarian may require and supervise the prescribed cleaning and disinfection of affected premises.

Source: Laws 2007, LB110, § 9.

54-706.10 Examination and testing of affected herd; prohibited acts; penalty.

The owner or custodian of an affected herd shall assemble and submit such herd for bovine tuberculosis examination and testing and shall provide reasonable assistance in confining the animals and providing facilities for proper administration of the testing. Any person who interferes or obstructs anyone in such work or attempts to obstruct or prevent by force the carrying on of such examination and testing is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 10.

54-706.11 Department; assessment and collection of payments for services.

The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Bovine Tuberculosis Act and the rules and regulations adopted and promulgated pursuant thereto. All payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

Source: Laws 2007, LB110, § 11.

54-706.12 Bovine Tuberculosis Cash Fund; created; use; investment.

The Bovine Tuberculosis Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Bovine Tuberculosis Act. Any money in the fund available for investment shall be invested by the state investment officer

pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB110, § 12.

Cross References

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

54-706.13 Implementation of act; funding; limitations on payments.

(1) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the Bovine Tuberculosis Act if funds for any activities or any portion have been appropriated. The department may develop statewide priorities for the expenditure of state funds available for bovine tuberculosis control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department.

(3) In administering the act and program activities pursuant to the act, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, (c) costs of testing to qualify or maintain herd accreditation, or (d) indemnity for any animal destroyed as a result of being affected with bovine tuberculosis.

(4) The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 13.

54-706.14 Tuberculin; injection or application; limitations.

(1) No person other than an accredited veterinarian shall inject or apply tuberculin into or on any animal.

(2) No person, including a veterinarian, shall inject or apply tuberculin into or on any animal for the purpose of plugging, for the purpose of fraudulently concealing the presence of bovine tuberculosis in such animal, or for the purpose of preventing future reactions to tuberculin.

Source: Laws 2007, LB110, § 14.

54-706.15 Department; enforcement powers; Attorney General or county attorney; powers and duties.

(1) In order to insure compliance with the Bovine Tuberculosis Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations without delay.

(3) This section does not require the department to report all acts for prosecution if in the opinion of the Director of Agriculture the public interest will best be served through other administrative, criminal, or civil actions.

Source: Laws 2007, LB110, § 15.

54-706.16 Violations; department powers; hearing; order or other action; appeal.

(1) Whenever the Director of Agriculture or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Bovine Tuberculosis Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director under the Bovine Tuberculosis Act may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) This section does not prevent the department from first pursuing any other administrative, civil, or criminal actions provided in the Bovine Tuberculosis Act when there is a violation of the act or rules and regulations adopted and promulgated under the act.

Source: Laws 2007, LB110, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

54-706.17 Violations of act; penalty.

Any person violating the Bovine Tuberculosis Act or any rule or regulation adopted and promulgated under the act for which no penalty is otherwise provided is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 17.

54-707 Repealed. Laws 2007, LB 110, § 20.

54-708 Repealed. Laws 2007, LB 110, § 20.

54-709 Repealed. Laws 2007, LB 110, § 20.

54-710 Repealed. Laws 2007, LB 110, § 20.

54-711 Repealed. Laws 2007, LB 110, § 20.

54-712 Repealed. Laws 2007, LB 110, § 20.

54-713 Repealed. Laws 2007, LB 110, § 20.

54-714 Repealed. Laws 2007, LB 110, § 20.

54-715 Repealed. Laws 2007, LB 110, § 20.

54-716 Repealed. Laws 2007, LB 110, § 20.

54-717 Repealed. Laws 2007, LB 110, § 20.

54-718 Repealed. Laws 2007, LB 110, § 20.

54-719 Repealed. Laws 2007, LB 110, § 20.

54-720 Repealed. Laws 2007, LB 110, § 20.

54-721 Repealed. Laws 2007, LB 110, § 20.

54-722 Repealed. Laws 2007, LB 110, § 20.

(d) GENERAL PROVISIONS

54-744.01 Dead animals; carcasses; disposal facilities; registration; when.

(1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of an animal feeding operation as defined in section 54-2417. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services. The Department of Agriculture

may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the animal feeding operation premises where a research or demonstration facility for innovative livestock disposal methods is located may be disposed of at such facility. Carcasses from other locations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Source: Laws 2001, LB 438, § 20; Laws 2004, LB 916, § 4; Laws 2007, LB296, § 225.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

54-747 Diseased animals; order for destruction; notice; protest; examination.

Whenever any animal has been adjudged to be affected with any infectious, contagious, or otherwise transmissible disease, other than a disease for which specific legislation exists, and has been ordered killed, the owner or custodian thereof shall be notified of such finding and order. Within forty-eight hours thereafter, such owner or custodian may file a protest with the Department of Agriculture stating under oath that to the best of his or her knowledge and belief such animal is free from such infectious, contagious, or otherwise transmissible disease. Thereupon, an examination of the animal involved shall be made by three veterinarians, graduates of a college of veterinary medicine which has been approved by the Department of Health and Human Services as a preliminary qualification for admission to practice veterinary medicine in the state. One of such veterinarians shall be appointed by the department, one by the person making such protest, and the two thus appointed shall choose the third. In case all three veterinarians or any two of them find such animal to be free from such infectious, contagious, or otherwise transmissible disease, the expense of such examination shall be paid by the state. In case the three veterinarians or any two of them find such animal to be affected with such infectious, contagious, or otherwise transmissible disease, the expense of the examination shall be paid by the person making the protest. The department and the person making such protest shall be bound by the result of such examination.

Source: Laws 1927, c. 12, art. VIII, § 6, p. 93; C.S.1929, § 54-943; R.S.1943, § 54-747; Laws 1969, c. 451, § 2, p. 1537; Laws 1993, LB 267, § 12; Laws 1996, LB 1044, § 279; Laws 2007, LB296, § 226.

54-750 Diseased animals; harboring or sale prohibited; penalties.

It shall be unlawful for any person to knowingly harbor, sell, or otherwise dispose of any animal or any part thereof affected with an infectious, contagious, or otherwise transmissible disease except as provided by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and the rules and regulations prescribed by the Department of Agriculture thereunder. Any person so offending shall be

deemed guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 9, p. 94; C.S.1929, § 54-946; R.S.1943, § 54-750; Laws 1977, LB 39, § 23; Laws 1993, LB 267, § 13; Laws 2006, LB 856, § 21.

54-751 Rules and regulations; violations; penalties.

It shall be unlawful for any person to violate any rule or regulation prescribed and promulgated by the Department of Agriculture pursuant to authority granted by sections 54-701 to 54-753 and 54-7,105 to 54-7,108, and any person so offending shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 10, p. 94; C.S.1929, § 54-947; R.S.1943, § 54-751; Laws 1977, LB 39, § 24; Laws 2001, LB 438, § 17; Laws 2006, LB 856, § 22.

54-752 Violations; penalties.

Any person violating any of the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 shall be guilty of a Class II misdemeanor for the first violation and a Class I misdemeanor for any subsequent violation.

Source: Laws 1927, c. 12, art. VIII, § 13, p. 95; C.S.1929, § 54-950; R.S.1943, § 54-752; Laws 1953, c. 184, § 8, p. 581; Laws 1977, LB 39, § 25; Laws 2001, LB 438, § 18; Laws 2006, LB 856, § 23.

54-753 Prevention of disease; writ of injunction available.

The penal provisions of section 54-752 shall not be exclusive, but the district courts of this state, in the exercise of their equity jurisdiction, may, by injunction, compel the observance of, and by that remedy enforce, the provisions of sections 54-701 to 54-753 and 54-7,105 to 54-7,108 and the rules and regulations established and promulgated by the Department of Agriculture.

Source: Laws 1927, c. 12, art. VIII, § 14, p. 95; C.S.1929, § 54-951; R.S.1943, § 54-753; Laws 2001, LB 438, § 19; Laws 2006, LB 856, § 24.

54-753.06 Compliance with exotic animal auction and swap meet laws; compliance with game laws required.

Compliance with sections 54-7,105 to 54-7,108 does not relieve a person of the requirement to comply with the provisions of sections 37-477 to 37-479.

Source: Laws 2006, LB 856, § 10.

(i) EXOTIC ANIMAL AUCTIONS AND SWAP MEETS

54-7,105 Purpose of sections.

The purpose of sections 54-7,105 to 54-7,108 is to authorize the Bureau of Animal Industry to require exotic animal auction or swap meet organizers to notify the bureau of any scheduled exotic animal auction or swap meet and to maintain records for animal disease tracking purposes. Exotic animals sold at exotic animal auctions or swap meets are often foreign to the United States or

to the State of Nebraska. These exotic animals may carry dangerous, infectious, contagious, or otherwise transmissible diseases, including foreign animal diseases, which could pose a threat to Nebraska's livestock health and the livestock industry.

Source: Laws 2006, LB 856, § 6.

Cross References

Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,106 Notification requirements.

An exotic animal auction or swap meet organizer shall notify the Bureau of Animal Industry at least thirty days prior to the date on which the exotic animal auction or swap meet is to be held. Notification shall include the location, time, and dates of the exotic animal auction or swap meet and the name and address of the exotic animal auction or swap meet organizer. Notification shall be made in writing or by facsimile transmission.

Source: Laws 2006, LB 856, § 7.

Cross References

Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,107 Records; contents; access by department.

(1) An exotic animal auction or swap meet organizer shall maintain records for each exotic animal auction or swap meet such organizer arranges, organizes, leases areas for, or otherwise coordinates at least five years after the date of the exotic animal auction or swap meet. The records shall include:

(a) The name, address, and telephone number of the exotic animal auction or swap meet organizer;

(b) The name and address of all persons who purchased, sold, traded, bartered, gave away, or otherwise transferred an exotic animal at the exotic animal auction or swap meet;

(c) The number of and species or type of each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet;

(d) The date of purchase, sale, trade, barter, or other transfer of an exotic animal at the exotic animal auction or swap meet; and

(e) A copy of the completed certificate of veterinary inspection, if required under the Animal Importation Act or any rules or regulations adopted and promulgated under the act or if the exotic animal is to be exported to another state, for each exotic animal purchased, sold, traded, bartered, given away, or otherwise transferred at the exotic animal auction or swap meet.

(2) An exotic animal auction or swap meet organizer shall, during all reasonable times, permit authorized employees and agents of the department to have access to and to copy any or all records relating to his or her exotic animal auction or swap meet business.

(3) When necessary for the enforcement of sections 54-7,105 to 54-7,108 or any rules and regulations adopted and promulgated pursuant to such sections,

the authorized employees and agents of the department may access the records required by this section.

Source: Laws 2006, LB 856, § 8.

Cross References

Animal Importation Act, see section 54-784.01.
Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

54-7,108 Prohibited transfers.

No beef or dairy cattle, calves, swine, bison, or sheep sold for wool or food, goats sold for dairy, food, or fiber, or domesticated cervine animals shall be purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet. An exotic animal auction or swap meet organizer shall contact the Bureau of Animal Industry if a particular animal cannot be readily identified as an animal that is prohibited from being purchased, sold, bartered, traded, given away, or otherwise transferred at an exotic animal auction or swap meet under this section.

Source: Laws 2006, LB 856, § 9.

Cross References

Definitions, see section 54-701.03.
Department of Agriculture, State Veterinarian, powers, see sections 54-703 to 54-705.
Violations, penalties, see section 54-752.

ARTICLE 8

COMMERCIAL FEED

Section
54-857. Commercial Feed Administration Cash Fund; created; use; investment.

54-857 Commercial Feed Administration Cash Fund; created; use; investment.

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On or before October 1, 2008, the State Treasurer shall transfer two hundred fifty thousand dollars from the Commercial Feed Administration Cash Fund to the Noxious Weed and Invasive Plant Species Assistance Fund.

Source: Laws 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3.
Operative date April 3, 2008.

Cross References

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

ARTICLE 24
LIVESTOCK WASTE MANAGEMENT ACT

Section

54-2416 Act, how cited.

Sections 54-2416 to 54-2438 shall be known and may be cited as the Livestock Waste Management Act.

Source: Laws 1998, LB 1209, § 1; Laws 1999, LB 822, § 7; Laws 2003, LB 619, § 15; R.S.Supp.,2003, § 54-2401; Laws 2004, LB 916, § 5; Laws 2006, LB 975, § 1.

54-2417 Terms, defined.

For purposes of the Livestock Waste Management Act:

(1) Animal feeding operation means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture as defined in section 2-3804.01;

(2) Best management practices means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective methods based on the best available technology achievable for specific sites to prevent or reduce the discharge of pollutants to waters of the state and control odor where appropriate. Best management practices also includes

operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage;

(3) Construct means the initiation of physical onsite activities;

(4) Construction and operating permit means the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation;

(5) Construction approval means an approval issued prior to December 1, 2006, by the department allowing construction of a livestock waste control facility;

(6) Council means the Environmental Quality Council;

(7) Department means the Department of Environmental Quality;

(8) Discharge means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state;

(9) Existing livestock waste control facility means a livestock waste control facility in existence prior to April 15, 1998, that does not hold a permit and which has requested an inspection prior to January 1, 2000;

(10) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock waste;

(11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility;

(12) National Pollutant Discharge Elimination System permit means either a general permit or an individual permit issued by the department pursuant to subsection (11) of section 81-1505. A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of Environmental Quality, are more appropriately controlled under a general permit than under an individual permit;

(13) New animal feeding operation means an animal feeding operation constructed after July 16, 2004;

(14) New livestock waste control facility means any livestock waste control facility for which a construction permit, an operating permit, a National Pollutant Discharge Elimination System permit, a construction approval, or a construction and operating permit, or an application therefor, is submitted on or after April 15, 1998;

(15) Operating permit means a permit issued prior to December 1, 2006, by the department after the completion of the livestock waste control facility in

accordance with the construction approval and the submittal of a completed certification form to the department;

(16) Person has the same meaning as in section 81-1502; and

(17) Waters of the state has the same meaning as in section 81-1502.

Source: Laws 1998, LB 1209, § 2; Laws 1999, LB 870, § 5; R.S.Supp.,2002, § 54-2402; Laws 2004, LB 916, § 6; Laws 2006, LB 975, § 2.

54-2418 Department; duties.

The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

Source: Laws 2004, LB 916, § 7; Laws 2006, LB 975, § 3.

Cross References

Environmental Protection Act, see section 81-1532.

54-2419 Permits; approval; conditions; restrictions.

(1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, delineated pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream watershed as the animal feeding operation, except that an existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(3) Existing animal feeding operations may receive a new or modified National Pollutant Discharge Elimination System permit, a new or modified construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility;

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; or

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(4) The department may deny or restrict an application for a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

Source: Laws 1998, LB 1209, § 4; Laws 1999, LB 822, § 8; Laws 1999, LB 870, § 7; R.S.Supp.,2002, § 54-2404; Laws 2004, LB 916, § 8; Laws 2006, LB 975, § 4.

54-2422 Inspection and construction and operating permit requirements; exemptions.

Animal feeding operations with animal capacity that is less than three hundred cattle, two hundred mature dairy cattle, seven hundred fifty swine weighing fifty-five pounds or more per head, three thousand swine weighing less than fifty-five pounds per head, one thousand five hundred ducks with liquid manure handling system, ten thousand ducks without liquid manure handling system, nine thousand chickens with liquid manure handling system, thirty-seven thousand five hundred chickens without liquid manure handling system, twenty-five thousand laying hens without liquid manure handling system, sixteen thousand five hundred turkeys, three thousand sheep, or one hundred fifty horses are exempt from the inspection and construction and operating permit requirements of the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated by the council pursuant to such acts, unless the animal feeding operation has discharged pollutants to waters of the state or the department has determined that such a discharge is more likely than not to occur.

Source: Laws 2004, LB 916, § 11; Laws 2006, LB 975, § 5.

Cross References

Environmental Protection Act, see section 81-1532.

54-2423 Animal feeding operation; request inspection; when; fees; department; duties.

(1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control

facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense. Exceptions to this provision are:

(a) An animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004; or

(b) A livestock operation that became an animal feeding operation by enactment of the Livestock Waste Management Act as such act existed on July 16, 2004, but was not required to request an inspection prior to that date.

(4) A person meeting the provisions of subdivision (3)(b) of this section shall request an inspection prior to January 1, 2009, and pay fees required pursuant to subsection (1) of this section.

(5) Any person required to request an inspection under subsection (4) of this section who operates an animal feeding operation after December 31, 2008, shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

Source: Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6; Laws 2007, LB677, § 1.

Cross References

Environmental Protection Act, see section 81-1532.

54-2424 Animal feeding operation; operating requirements; when.

Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on March 17, 2006, shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

Source: Laws 2004, LB 916, § 13; Laws 2006, LB 975, § 7.

Cross References

Environmental Protection Act, see section 81-1532.

54-2425 National Pollutant Discharge Elimination System permit; department; duties.

(1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have thirty days to comment to the department regarding any conditions that may exist at the proposed site which the department should consider regarding the content of the application for a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

Source: Laws 2004, LB 916, § 14; Laws 2006, LB 975, § 8.

54-2426 Applications; contents.

Each application for a National Pollutant Discharge Elimination System permit or construction and operating permit shall include, in addition to other requirements, (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. For a construction and operating permit, the plan shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

Source: Laws 2004, LB 916, § 15; Laws 2006, LB 975, § 9.

54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Source: Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10.

Cross References

Environmental Protection Act, see section 81-1532.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

54-2429 National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.

(1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) An applicant required to obtain a National Pollutant Discharge Elimination System permit is subject to the requirements of the Engineers and Architects Regulation Act.

(3) An applicant who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit is subject to the requirements of the Engineers and Architects Regulation Act.

(4) An applicant who has a small or medium animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit, but not required to obtain a National Pollutant Discharge Elimination System permit, is exempt from the Engineers and Architects Regulation Act.

(5) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

Source: Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13; Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16; R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18; Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11; Laws 2007, LB313, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Environmental Protection Act, see section 81-1532.
Safety of Dams and Reservoirs Act, see section 46-1601.

54-2431 Applications; rejection; when; disciplinary actions.

(1) The department shall reject an application for a National Pollutant Discharge Elimination System permit, construction and operating permit, or major modification or revoke or suspend a National Pollutant Discharge Elimination System permit or construction and operating permit upon a finding that the applicant or permittee is unsuited to perform the obligations of a permitholder.

(2) The applicant or permittee shall be determined unsuited to perform the obligations of a permitholder if the department finds that within the past five years the applicant or permittee:

(a) Has allowed three discharges to waters of the state at any facility in Nebraska owned or operated by the applicant unless the discharge is in compliance with National Pollutant Discharge Elimination System permit conditions, if applicable, and rules and regulations adopted and promulgated under the Livestock Waste Management Act and the department was notified in accordance with the rules and regulations; or

(b) Has a criminal conviction for a violation of section 81-1506 or a felony criminal conviction for violation of the environmental law in any jurisdiction.

Source: Laws 2004, LB 916, § 20; Laws 2006, LB 975, § 12.

54-2432 Acts prohibited.

Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

Source: Laws 2004, LB 916, § 21; Laws 2006, LB 975, § 13.

Cross References

Environmental Protection Act, see section 81-1532.

54-2433 Department; contracts authorized.

In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

Source: Laws 1998, LB 1209, § 11; Laws 1999, LB 870, § 12; R.S.Supp.,2002, § 54-2411; Laws 2004, LB 916, § 22; Laws 2006, LB 975, § 14.

54-2435 Council; rules and regulations.

(1) The council shall adopt and promulgate rules and regulations for animal feeding operations under the Environmental Protection Act and the Livestock Waste Management Act which provide for:

(a) Requirements for animal feeding operations which shall include:

(i) Location restrictions and setbacks to protect waters of the state;

(ii) Applications and inspection requests;

(iii) Identification of ownership;

(iv) Numbers, size, and types of animals;

(v) Type of waste control facility;

(vi) Design, construction, operation, and maintenance;

(vii) Monitoring of surface or ground water which may be necessary as determined by the department where a significant risk to waters of the state exists;

(viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;

(ix) Closure and corrective action;

(x) Best management practices; and

(xi) Other such requirements deemed necessary to protect waters of the state;

(b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;

(c) National Pollutant Discharge Elimination System permit issuance, denial, renewal, revocation, suspension, termination, or transfer;

(d) Training requirements for permitholders;

(e) Construction and operating permit issuance, denial, revocation, termination, or transfer;

(f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, suspension, or termination;

(g) Public notice and hearing requirements;

(h) Requirements for existing livestock waste control facilities;

(i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;

(j) Requirements for record keeping and reporting;

(k) A fee schedule pursuant to sections 54-2423 and 54-2428;

(l) Procedures for collection of fees pursuant to this section and sections 54-2423 and 54-2428; and

(m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act.

(2) Rules and regulations adopted and promulgated under this section may be based upon the size of the animal feeding operation and the form of waste management and may include more stringent requirements for larger animal

feeding operations and waste control technologies that are more likely to cause adverse impacts.

(3) The council may adopt and promulgate any other rules and regulations necessary to carry out the purposes of the Environmental Protection Act and the Livestock Waste Management Act.

(4) Rules and regulations adopted pursuant to this section shall be no less stringent than the federal Clean Water Act, 33 U.S.C. 1251 et seq.

(5) If a conflict arises between the authority of the council under the Environmental Protection Act and the authority of the council under the Livestock Waste Management Act, the authority of the council under the Livestock Waste Management Act shall control.

Source: Laws 1998, LB 1209, § 13; Laws 1999, LB 870, § 14; R.S.Supp.,2002, § 54-2413; Laws 2004, LB 916, § 24; Laws 2006, LB 975, § 15.

Cross References

Environmental Protection Act, see section 81-1532.

54-2436 Reinstatement of operating permit; conditions; fee.

(1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:

(a) The request must be filed on or before December 31, 2007;

(b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and

(c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.

(2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

Source: Laws 2006, LB 975, § 16.

54-2437 Conditional use permit or special exception; county planning commission or county board; powers.

(1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the

operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

(a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

Source: Laws 2006, LB 975, § 17.

54-2438 Major modification; applications; contents.

Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

Source: Laws 2006, LB 975, § 18.

ARTICLE 26

COMPETITIVE LIVESTOCK MARKETS ACT

Section
54-2601. Act, how cited.
54-2603. Legislative findings.
54-2627.01. Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.

54-2601 Act, how cited.

Sections 54-2601 to 54-2631 shall be known and may be cited as the Competitive Livestock Markets Act.

Source: Laws 1999, LB 835, § 1; Laws 2006, LB 856, § 25.

54-2603 Legislative findings.

(1) The Legislature finds that family farmers and ranchers have been experiencing, with greater frequency, severely depressed livestock market prices.

These market conditions are disproportionately affecting independent producers, which make up the majority of farms and ranches, and are threatening the economic stability of Nebraska's rural communities. The Legislature further finds that packer concentration, vertical integration, and contractual arrangements are undermining the system of price discovery. In the absence of any meaningful federal response to the conditions described, the purpose of the Competitive Livestock Markets Act is to increase livestock market price transparency, ensuring that producers can compete in a free and open market. This is accomplished by establishing minimum price and contract reporting requirements, eliminating volume premiums and volume-based incentives, scrutinizing livestock production contracts and marketing agreements, and statutorily reinforcing the constitutional prohibition against the ownership, keeping, or feeding of livestock by packers for the production of livestock or livestock products.

(2) The Legislature further finds that the mandatory reporting of price and other terms in negotiated or contract procurement of livestock that has been in place under the federal Livestock Mandatory Reporting Act of 1999 is an important reform of livestock markets that contributes to greater market transparency, enhances the ability of livestock sellers to more competently and confidently market livestock, and lessens the existence of conditions under which market price manipulation and unfair preference or advantage in packer procurement practices can occur. It is a purpose of the Competitive Livestock Markets Act to provide for the continuation of mandatory price reporting for the benefit of Nebraska producers and protection of the integrity of livestock markets in Nebraska in the event of termination of the federal Livestock Mandatory Reporting Act of 1999 and its preemption of similar state price reporting laws as well as to provide for an orderly implementation of the state price reporting system authorized by the Competitive Livestock Markets Act, should Congress fail to reauthorize the federal Livestock Mandatory Reporting Act of 1999.

Source: Laws 1999, LB 835, § 3; Laws 2006, LB 856, § 26.

54-2627.01 Preemption by federal Livestock Mandatory Reporting Act of 1999; director; duties.

(1) Sections 54-2607 to 54-2627 are preempted by the federal Livestock Mandatory Reporting Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in effect.

(2)(a) If Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999 before December 1, 2006, the director shall, on December 1, 2006, or as soon before or after as practicable, prepare a budget and an appropriation request from the General Fund, from the Competitive Livestock Markets Cash Fund, or from other cash funds under the control of the director, for submission to the Legislature in an amount sufficient to enable the department to carry out its duties under sections 54-2607 to 54-2627, and such sections shall become applicable on October 1, 2007.

(b) If, on or after December 1, 2006, Congress does not reauthorize the federal Livestock Mandatory Reporting Act of 1999, the director shall prepare such budget and appropriation request on or before a date that is twelve calendar months after the date such federal act expires or is terminated, and sections 54-2607 to 54-2627 shall become applicable on the first day of the calendar quarter that is eighteen months after the date such sections are not

preempted by the federal act. No General Funds shall be appropriated for implementation of sections 54-2607 to 54-2627 after the date of commencement provided for in this section of reporting of price and other data regarding livestock transactions pursuant to sections 54-2613 and 54-2623. It is the intent of the Legislature that any General Funds appropriated for purposes of this section shall be reimbursed to the General Fund.

Source: Laws 2006, LB 856, § 27.

CHAPTER 55
MILITIA

Article.
1. Military Code. 55-131, 55-133.
5. Family Military Leave Act. 55-501 to 55-507.

ARTICLE 1
MILITARY CODE

Section
55-131. Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.
55-133. Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.

55-131 Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.

The Military Department Cash Fund is created. The fund shall be administered by the Adjutant General. The fund shall consist of all nonfederal revenue received by the National Guard pursuant to this section. The Adjutant General is hereby authorized to accept by devise, gift, or otherwise and hold, as trustee, for the benefit and use of the National Guard or any part thereof any property, real or personal; to invest and reinvest the property; to collect, receive, and recover the rents, incomes, and issues from the property; and to expend them as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the National Guard as he or she in his or her discretion shall determine, subject to the approval of the Governor. Except as otherwise provided by law, all other money received by the National Guard and derived from any other source shall be remitted to the State Treasurer for credit to the Military Department Cash Fund. 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 1929, c. 189, § 20, p. 662; C.S.1929, § 55-126; R.S.1943, § 55-150; Laws 1965, c. 342, § 1, p. 973; R.R.S.1943, § 55-150; Laws 1969, c. 459, § 29, p. 1591; Laws 1969, c. 584, § 55, p. 2379; Laws 1995, LB 7, § 61; Laws 2006, LB 787, § 9; Laws 2007, LB322, § 9.

Cross References

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

55-133 Adjutant General; armories and equipment; assignment; military emergency vehicles; designation.

(1) The Adjutant General shall assign to each organization an armory and such other equipment as may be necessary to comply with the requirements of United States laws or regulations for National Guard units allotted to the State of Nebraska.

(2)(a) The Adjutant General may designate any publicly owned military vehicles of the National Guard described in subdivision (b) of this subsection as military emergency vehicles. Military emergency vehicles shall be operated as emergency vehicles only when responding to a public disaster, war, riot, invasion, insurrection, or resistance of process or in case of imminent danger of the occurrence of any of such events. The Adjutant General shall develop and enforce standard operating procedures for military emergency vehicles.

(b) Vehicles eligible for designation as military emergency vehicles shall be limited to vehicles assigned to:

(i) The Civil Support Team, or any successor unit; and

(ii) The chemical, biological, radiological, nuclear, and high-yield explosives enhanced response force package, commonly known as the CERFP unit, or any successor unit.

Source: Laws 1929, c. 189, § 21, p. 662; C.S.1929, § 55-127; R.S.1943, § 55-152; Laws 1969, c. 459, § 31, p. 1592; Laws 2008, LB196, § 1.
Effective date July 18, 2008.

ARTICLE 5

FAMILY MILITARY LEAVE ACT

Section

55-501 Act, how cited.

Sections 55-501 to 55-507 shall be known and may be cited as the Family Military Leave Act.

Source: Laws 2007, LB497, § 1.

55-502 Terms, defined.

For purposes of the Family Military Leave Act:

(1) Employee means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. Employee does include an independent contractor. Employee includes an employee of a covered employer who has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty hours of service during the twelve-month period immediately preceding the commencement of the leave;

(2) Employee benefits means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer;

(3) Employer means (a) any individual, legal representative, partnership, limited liability company, corporation, association, business trust, or other business entity and (b) the State of Nebraska and political subdivisions; and

(4) Family military leave means leave requested by an employee who is the spouse or parent of a person called to military service lasting one hundred seventy-nine days or longer with the state or United States pursuant to the orders of the Governor or the President of the United States.

Source: Laws 2007, LB497, § 2.

55-503 Family military leave authorized; conditions.

(1) Any employer that employs between fifteen and fifty employees shall provide up to fifteen days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(2) An employer that employs more than fifty employees shall provide up to thirty days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(3) The employee shall give at least fourteen days' notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking family military leave for less than five consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

Source: Laws 2007, LB497, § 3.

55-504 Employee exercising right to family military leave; rights; continuation of benefits.

(1) Any employee who exercises the right to family military leave under the Family Military Leave Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the act.

(2) During any family military leave taken under the act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Source: Laws 2007, LB497, § 4.

55-505 Loss of certain employee benefits prohibited; act; how construed.

(1) Taking family military leave under the Family Military Leave Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(2) Nothing in the act shall be construed to affect an employer's obligation to comply with any collective-bargaining agreement or employee benefit plan that

provides greater leave rights to employees than the rights provided under the act.

(3) The family military leave rights provided under the act shall not be diminished by any collective-bargaining agreement or employee benefit plan.

(4) Nothing in the act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under the act.

Source: Laws 2007, LB497, § 5.

55-506 Employer; actions prohibited.

(1) An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the Family Military Leave Act.

(2) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the act.

(3) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by the act.

Source: Laws 2007, LB497, § 6.

55-507 Civil action authorized; remedies authorized.

A civil action may be brought in the district court having jurisdiction by an employee to enforce the Family Military Leave Act. The district court may enjoin any act or practice that violates or may violate the Family Military Leave Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the act.

Source: Laws 2007, LB497, § 7.

CHAPTER 57
MINERALS, OIL, AND GAS

Article.
2. Oil, Gas, and Mineral Interests. 57-239.
5. Liquefied Petroleum Gas. 57-501, 57-517.
13. Natural Gas Utility Service Areas. Transferred.

ARTICLE 2

OIL, GAS, AND MINERAL INTERESTS

Section
57-239. Tax Commissioner; rules and regulations; prescribe forms.

57-239 Tax Commissioner; rules and regulations; prescribe forms.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary for the implementation of sections 57-235 to 57-239. The Tax Commissioner shall also prescribe necessary forms for the implementation of sections 57-235 to 57-239.

Source: Laws 1981, LB 59, § 5; Laws 2000, LB 968, § 19; Laws 2007, LB334, § 8.

ARTICLE 5

LIQUEFIED PETROLEUM GAS

Section
57-501. Terms, defined.
57-517. Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

57-501 Terms, defined.

As used in sections 57-501 to 57-507, unless the context otherwise requires:

(1) Person means and includes any person, firm, or corporation;

(2) Owner means and includes (a) any person who holds a written bill of sale or other instrument under which title to the container was transferred to such person, (b) any person who holds a paid or receipted invoice showing purchase and payment of such container, (c) any person whose name, initials, mark, or other identifying device has been plainly and legibly stamped or otherwise shown upon the surface of such container for a period of not less than one year prior to the final enactment and approval of sections 57-501 to 57-507, or (d) any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale or otherwise;

(3) Liquefied petroleum gas means and includes any material which is composed predominantly of hydrocarbons or mixtures of the same, such as propane, propylene, butanes (normal butane and isobutane), and butylenes;

(4) Container means any vessel, including a cylinder or tank, used for storing of liquefied petroleum gas; and

(5) Cylinder means a container constructed in accordance with the United States Department of Transportation specifications in Title 49 of the Code of Federal Regulations as they existed on March 7, 2006.

Source: Laws 1951, c. 188, § 1, p. 695; Laws 2001, LB 137, § 1; Laws 2006, LB 1007, § 3.

57-517 Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

(1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

(a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;

(b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;

(c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and

(d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:

(i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;

(ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;

(iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;

(iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or

(v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

WARNING: Do Not Open Container Shutoff Valve! If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of the system serviced by the container at the time the valve is turned back on. The leak check must be conducted by a qualified service technician. Do Not Attempt To Open The Valve Yourself! Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

Source: Laws 2007, LB274, § 1.

ARTICLE 13

NATURAL GAS UTILITY SERVICE AREAS

Section

57-1301 Transferred to section 66-1858

57-1302 Transferred to section 66-1859

57-1303 Transferred to section 66-1860

57-1304 Transferred to section 66-1861

57-1305 Transferred to section 66-1862

57-1306 Transferred to section 66-1863

57-1307 Transferred to section 66-1864

CHAPTER 58
MONEY AND FINANCING

Article.
2. Nebraska Investment Finance Authority. 58-201 to 58-242.
6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-601 to 58-619.
7. Nebraska Affordable Housing Act. 58-703 to 58-708.

ARTICLE 2
NEBRASKA INVESTMENT FINANCE AUTHORITY

Section
58-201. Act, how cited.
58-202. Cost and availability of financing; legislative findings and declarations.
58-203. Authority; purpose for creation.
58-207. Definitions, where found.
58-210.02. Economic-impact project, defined.
58-219. Project, defined.
58-219.01. Public agency, defined.
58-239.04. Authority; economic-impact projects; powers and duties.
58-242. Authority; agricultural projects; duties.

58-201 Act, how cited.

Sections 58-201 to 58-272 shall be known and may be cited as the Nebraska Investment Finance Authority Act.

Source: Laws 1983, LB 626, § 1; Laws 1986, LB 1230, § 29; Laws 1989, LB 311, § 1; Laws 1989, LB 706, § 1; Laws 1991, LB 253, § 1; Laws 1992, LB 1001, § 2; Laws 1996, LB 1322, § 1; Laws 2002, LB 1211, § 3; Laws 2006, LB 693, § 1.

58-202 Cost and availability of financing; legislative findings and declarations.

(1) The Legislature hereby finds and declares that:

(a) The high cost of agricultural loans and the general unavailability of such loans at favorable rates and terms for farmers, particularly beginning farmers, and other agricultural enterprises have resulted in decreased crop, livestock, and business productivity and prevented farmers and other agricultural enterprises from acquiring modern agricultural equipment and processes. These problems have made it difficult for farmers and other agricultural enterprises to maintain or increase their present number of employees and have decreased the supply of agricultural commodities available to fulfill the needs of the citizens of this state; and

(b) There exists in this state an inadequate supply of and a pressing need for farm credit and agricultural loan financing at interest rates and terms which are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(2) The Legislature hereby finds and declares that:

(a) From time to time the high rates of interest charged by mortgage lenders seriously restrict existing housing transfers and new housing starts and the resultant reduction in residential construction starts causes a condition of substantial unemployment and underemployment in the construction industry;

(b) Such conditions generally result in and contribute to the creation of slums and blighted areas in the urban and rural areas of this state and a deterioration of the quality of living conditions within this state and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident prevention, and other public services and facilities; and

(c) There exists in the urban and rural areas of this state an inadequate supply of and a pressing need for sanitary, safe, and uncrowded housing at prices at which low-income and moderate-income persons, particularly first-time homebuyers, can afford to purchase, construct, or rent and as a result such persons are forced to occupy unsanitary, unsafe, and overcrowded housing.

(3) The Legislature hereby finds and declares that:

(a) Adequate and reliable energy supplies are a basic necessity of life and sufficient energy supplies are essential to supplying adequate food and shelter;

(b) The cost and availability of energy supplies has been and will continue to be a matter of state and national concern;

(c) The increasing cost and decreasing availability of energy supplies for purposes of residential heating will limit the ability of many of Nebraska's citizens to provide the basic necessities of life and will result in a deterioration in living conditions and a threat to the health and welfare of the citizens of this state;

(d) Energy conservation through building modifications including, but not limited to, insulation, weatherization, and the installation of alternative energy devices has been shown to be a prudent means of reducing energy consumption costs and the need for additional costly facilities to produce and supply energy;

(e) Because of the high cost of available capital, the purchase of energy conservation devices is not possible for many Nebraskans. The prohibitively high interest rates for private capital create a situation in which the necessary capital cannot be obtained solely from private enterprise sources and there is a need for the stimulation of investment of private capital, thereby encouraging the purchase of energy conservation devices and energy conserving building modifications;

(f) The increased cost per capita of supplying adequate life-sustaining energy needs has reduced the amount of funds, both public and private, available for providing other necessities of life, including food, health care, and safe, sanitary housing; and

(g) The continuing purchase of energy supplies results in the transfer of ever-increasing amounts of capital to out-of-state energy suppliers.

(4) The Legislature hereby finds and declares that:

(a) There exist within this state unemployment and underemployment especially in areas of basic economic activity, caused by economic decline and need for diversification of the economic base, needlessly increasing public expenditures for unemployment compensation and welfare, decreasing the tax base,

reducing tax revenue, and resulting in economic and social liabilities to the entire state;

(b) Such unemployment and underemployment cause areas of the state to deteriorate and become substandard and blighted and such conditions result in making such areas economic or social liabilities harmful to the economic and social well-being of the entire state and the communities in which they exist, needlessly increasing public expenditures, imposing onerous state and municipal burdens, decreasing the tax base, reducing tax revenue, substantially impairing or arresting the sound growth of the state and the municipalities, depreciating general state and community-wide values, and contributing to the spread of disease and crime which necessitate excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(c) There exist within this state conditions resulting from the concentration of population of various counties, cities, and villages which require the construction, maintenance, and operation of adequate hospital and nursing facilities for the care of the public health. Since these conditions cannot be remedied by the ordinary operations of private enterprises and since provision of adequate hospital, nursing, and medical care is a public use, it is in the public interest that adequate hospital and medical facilities and care be provided in order to care for and protect the public health and welfare;

(d) Creation of basic economic jobs in the private sector and the promotion of health and welfare by the means provided under the Nebraska Investment Finance Authority Act and the resulting reduction of needless public expenditures, expansion of the tax base, provision of hospitals and health care and related facilities, and increase of tax revenue are needed within this state; and

(e) Stimulation of economic development throughout the state and the provision of health care at affordable prices are matters of state policy, public interest, and statewide concern and within the powers and authority inherent in and reserved to the state in order that the state and its municipalities shall not continue to be endangered by areas which consume an excessive proportion of their revenue, in order that the economic base of the state may be broadened and stabilized thereby providing jobs and necessary tax base, and in order that adequate health care services be provided to all residents of this state.

(5) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist municipalities, as defined in section 81-15,149, in providing wastewater treatment facilities and safe drinking water facilities. The federal funding provided for wastewater treatment facilities is extremely limited while the need to provide and improve wastewater treatment facilities and safe drinking water facilities is great;

(b) The construction, development, rehabilitation, and improvement of modern and efficient sewer systems and wastewater treatment facilities are essential to protecting and improving the state's water quality, the provision of adequate wastewater treatment facilities and safe drinking water facilities is essential to economic growth and development, and new sources of financing for such projects are needed;

(c) The federal government has acted to end the system of federal construction grants for clean water projects and has instead provided for capitalization

grants to capitalize state revolving funds for wastewater treatment projects and will soon expand that to include safe drinking water facilities, and the state has created or is expected to create appropriate funds or accounts for such purpose. The state is required or expected to be required to provide matching funds for deposit into such funds or accounts, and there is a need for financing in excess of the amount which can be provided by the federal money and the state match; and

(d) Additional assistance can be provided to municipalities as defined in section 81-15,149 to alleviate the problems of water pollution or the provision of safe drinking water by providing for the issuance of revenue bonds, the proceeds of which shall be deposited into the Wastewater Treatment Facilities Construction Loan Fund or the comparable state fund to finance safe drinking water facilities. Nothing in this section shall prohibit the provision of loans, including loans made pursuant to the Conservation Corporation Act, to a municipality as defined in section 81-15,149 for the construction, development, rehabilitation, operation, maintenance, and improvement of wastewater treatment facilities or safe drinking water facilities.

(6) The Legislature hereby finds and declares that:

(a) There is a need within this state for financing to assist public school boards and school districts and private for-profit or not-for-profit schools in connection with removal of materials determined to be hazardous to the health and well-being of the residents of the state and the reduction or elimination of accessibility barriers and that the federal funding provided for such projects is extremely limited and the need and requirement to remove such materials and to reduce or eliminate accessibility barriers from school buildings is great;

(b) The financing of the removal of such environmental hazards and the reduction or elimination of accessibility barriers is essential to protecting and improving the facilities in the state which provide educational benefits and services;

(c) The federal government has directed schools to remove such hazardous materials and to reduce or eliminate accessibility barriers; and

(d) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and assist in the financing of the removal of environmental hazards and the reduction or elimination of accessibility barriers in educational facilities in this state in order to provide for a clean, safe, and accessible environment to protect the health and welfare of the citizens and residents of this state.

(7) The Legislature hereby finds and declares that:

(a) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(b) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(c) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination have caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(d) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(e) There is a need within this state for financing to assist counties, cities, villages, entities created under the Interlocal Cooperation Act and the Joint Public Agency Act, and private persons with the construction and operation of new solid waste disposal areas or facilities and with the closure, monitoring, and remediation of existing solid waste disposal areas and facilities;

(f) Financing the construction and operation of new solid waste disposal areas and facilities and financing the closure, monitoring, and remediation of existing and former solid waste disposal areas and facilities in the state is essential to protect the environment and the public health and welfare;

(g) The federal government has directed that effective October 1, 1993, all solid waste disposal areas and facilities shall be upgraded to meet stringent siting, design, construction, operation, closure, monitoring, and remediation requirements; and

(h) The problems enumerated in this subsection cannot be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the assistance of the authority to encourage the investment of private capital and to assist in the financing of solid waste disposal areas and facilities and in the removal of environmental hazards in solid waste disposal areas and facilities in this state in order to provide for a clean environment to protect the health and welfare of the citizens and residents of this state.

(8) The Legislature hereby finds and declares that:

(a) During emergencies the resources of political subdivisions must be effectively directed and coordinated to public safety agencies to save lives, to protect property, and to meet the needs of citizens;

(b) There exists a need for public safety communication systems for use by Nebraska's public safety agencies as defined in the Nebraska Public Safety Communication System Act;

(c) Investment in the public safety communication infrastructure is required to ensure the effectiveness of such public safety agencies. Since the maintenance of public safety is a paramount concern but the cost of purchasing and operating multiple communication infrastructures is prohibitive, it is imperative that political subdivisions cooperate in their efforts to obtain real and personal property to establish, operate, maintain, and manage public safety communication systems; and

(d) There is a need within this state for financing to assist political subdivisions and any entities created under the Interlocal Cooperation Act and the Joint Public Agency Act with the acquisition, construction, and operation of real and personal property of public safety communication systems.

(9) The Legislature hereby finds and declares that, as of May 27, 2005, and in connection with the financing of agricultural projects, there is a need to

increase both the limit on individual net worth and the limit on the aggregate loan amount that may be provided by the authority. Such adjustments are necessary to address the inadequate supply of and pressing need for farm credit and agricultural loan financing at interest rates and terms that are consistent with the needs of farmers, particularly beginning farmers, and other agricultural enterprises.

(10) The Legislature hereby finds and declares that:

(a) The amount of funding and other resources available to remedy the problems identified in this section has been, and continues to be, insufficient. Accordingly, the authority must be provided with additional powers to adequately address the problems identified in this section with funding derived from public and private sources and state and federal sources;

(b) Carrying out the purposes of the Nebraska Investment Finance Authority Act may necessitate innovative agreements with public agencies and private entities and it is the policy of this state to encourage such public-private and intergovernmental cooperation; and

(c) Better, more broad-based sources of financing must be made available to the authority and by the authority to the private sector of the economy to enable the authority to address the problems identified in this section.

Source: Laws 1983, LB 626, § 2; Laws 1989, LB 706, § 2; Laws 1989, LB 311, § 2; Laws 1991, LB 253, § 2; Laws 1992, LB 1001, § 3; Laws 1992, LB 1257, § 67; Laws 1996, LB 1322, § 2; Laws 1999, LB 87, § 77; Laws 2002, LB 1211, § 4; Laws 2005, LB 90, § 16; Laws 2005, LB 343, § 1; Laws 2006, LB 693, § 2.

Cross References

Conservation Corporation Act, see section 2-4201.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Public Safety Communication System Act, see section 86-401.

58-203 Authority; purpose for creation.

(1) The problems enumerated in section 58-202 cannot alone be remedied through the operation of private enterprise or individual communities or both but may be alleviated through the creation of a quasi-governmental body to:

(a) Encourage the investment of private capital and stimulate the construction of sanitary, safe, and uncrowded housing for low-income and moderate-income persons, particularly first-time homebuyers, through the use of public financing as provided by the Nebraska Investment Finance Authority Act at reasonable interest rates and by coordinating and cooperating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(b) Encourage the investment of private capital to provide financing for farmers, particularly beginning farmers, and other agricultural enterprises of usual and customary size for such farming operations within the community at interest rates lower than those available in conventional farm credit markets which is essential to alleviating the conditions described in section 58-202 and is in the public interest;

(c) Encourage the investment of private capital and stimulate the creation of basic economic activity, the creation of jobs, the provision of adequate health care, and the expansion of the tax base throughout the state through the use of

public financing and by coordinating with private industry and local communities which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(d) Encourage the investment of private capital and assist in the construction, development, rehabilitation, and improvement of wastewater treatment facilities and safe drinking water facilities in this state to provide for clean water to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(e) Encourage the investment of private capital and assist schools through the use of public financing in the abatement of environmental hazards and the reduction and elimination of accessibility barriers in their school buildings or on their school grounds in order to protect the health and welfare of the citizens and residents of this state and promote economic well-being which are essential to alleviating the conditions described in section 58-202 and are in the public interest;

(f) Encourage the investment of private capital and assist in financing the construction and operation of new solid waste disposal areas and facilities and the closure, monitoring, and remediation of former and existing solid waste disposal areas and facilities;

(g) Encourage the investment of private capital and stimulate the construction and operation of any public safety communication project through the use of public financing as provided by the act at reasonable interest rates which is essential to addressing the needs described in section 58-202 and is in the public interest; and

(h) Encourage cooperation with public agencies and the use of entrepreneurial methods and approaches to better access federal, state, and local government resources and to stimulate more private sector initiatives and joint public-private initiatives to carry out the purposes of the Nebraska Investment Finance Authority Act.

(2) Alleviating the conditions and problems enumerated in section 58-202 through encouragement of private investment by a quasi-governmental body is a public purpose and use for which public money provided by the sale of bonds may be borrowed, expended, advanced, loaned, or granted. Such activities shall not be conducted for profit. Such activities are proper governmental functions and can best be accomplished by the creation of a quasi-governmental body vested with the powers and duties specified in the Nebraska Investment Finance Authority Act. The necessity for the provisions of the act to protect the health, safety, morals, and general welfare of all the people of this state is hereby declared to be a matter of legislative determination. The quasi-governmental body created by the act shall make financing available for new or existing housing to serve those people, particularly first-time homebuyers, whom private industry is unable to serve at current interest rates, shall make financing available for farmers, particularly beginning farmers, shall make financing available for the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and for the construction, operation, closure, monitoring, and remediation of solid waste disposal areas and facilities in this state, shall make financing available to schools for the abatement of environmental hazards and the

reduction and elimination of accessibility barriers, and shall make financing available for public safety communication projects in this state.

Source: Laws 1983, LB 626, § 3; Laws 1989, LB 311, § 3; Laws 1991, LB 253, § 3; Laws 1992, LB 1001, § 4; Laws 1992, LB 1257, § 68; Laws 1996, LB 1322, § 3; Laws 2002, LB 1211, § 5; Laws 2006, LB 693, § 3.

58-207 Definitions, where found.

For purposes of the Nebraska Investment Finance Authority Act, unless the context otherwise requires, the definitions found in sections 58-207.01 to 58-225 shall be used.

Source: Laws 1983, LB 626, § 7; Laws 1984, LB 1084, § 3; Laws 1989, LB 706, § 3; Laws 1991, LB 253, § 7; Laws 1992, LB 1001, § 5; Laws 1996, LB 1322, § 4; Laws 2006, LB 693, § 4.

58-210.02 Economic-impact project, defined.

(1) Economic-impact project means any of the following, whether or not in existence, financed in whole or in part through the use of the federal new markets tax credit described in section 45D of the Internal Revenue Code, and located in a low-income community designated pursuant to section 45D of the Internal Revenue Code or designated by the Department of Economic Development:

(a) Any land, building, or other improvement, including, but not limited to, infrastructure;

(b) Any real or personal property;

(c) Any equipment; and

(d) Any undivided or other interest in any property described in subdivision (a), (b), or (c) of this subsection.

(2) Economic-impact project does not include any operating capital.

Source: Laws 2006, LB 693, § 5.

58-219 Project, defined.

Project shall mean one or more of the following:

(1)(a) Rental housing;

(b) Residential housing; and

(c) Residential energy conservation devices;

(2) Agriculture or agricultural enterprise;

(3) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, suitable or used for or in connection with any of the following revenue-producing enterprises or two or more such enterprises engaged or to be engaged in:

(a) In all areas of the state, manufacturing or industrial enterprises, including assembling, fabricating, mixing, processing, warehousing, distributing, or transporting any products of agriculture, forestry, mining, industry, or manufacturing; pollution control facilities; and facilities incident to the development of industrial sites, including land costs and the costs of site improvements such

as drainage, water, storm, and sanitary sewers, grading, streets, and other facilities and structures incidental to the use of such sites for manufacturing or industrial enterprises;

(b) In all areas of the state, service enterprises if (i) such facilities constitute new construction or rehabilitation, including hotels or motels, sports and recreation facilities available for use by members of the general public either as participants or spectators, and convention or trade show facilities, (ii) such facilities do not or will not derive a significant portion of their gross receipts from retail sales or utilize a significant portion of their total area for retail sales, and (iii) such facilities are owned or to be owned by a nonprofit entity;

(c) In blighted areas of the state, service and business enterprises if such facilities constitute new construction, acquisition, or rehabilitation, including, but not limited to, those enterprises specified in subdivision (3)(b) of this section, office buildings, and retail businesses if such facilities are owned or to be owned by a nonprofit entity; and

(d) In all areas of the state, any land, building, or other improvement and all real or personal property, including furniture and equipment, and any undivided or other interest in any such property, whether or not in existence, suitable or used for or in connection with any hospital, nursing home, and facilities related and subordinate thereto.

Nothing in this subdivision shall be construed to include any rental or residential housing, residential energy conservation device, or agriculture or agricultural enterprise;

(4) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, used by a nonprofit entity as an office building, but only if (a) the principal long-term occupant or occupants thereof initially employ at least fifty people, (b) the office building will be used by the principal long-term occupant or occupants as a national, regional, or divisional office, (c) the principal long-term occupant or occupants are engaged in a multistate operation, and (d) the authority makes the findings specified in subdivision (1) of section 58-251;

(5) Wastewater treatment or safe drinking water project which shall include any project or undertaking which involves the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and is financed by a loan from or otherwise provided financial assistance by the Wastewater Treatment Facilities Construction Loan Fund or any comparable state fund providing money for the financing of safe drinking water facilities;

(6) Any cost necessary for abatement of an environmental hazard or hazards in school buildings or on school grounds upon a determination by the school that an actual or potential environmental hazard exists in the school buildings or on the school grounds under its control;

(7) Any accessibility barrier elimination project costs necessary for accessibility barrier elimination in school buildings or on school grounds upon a determination by the school that an actual or potential accessibility barrier exists in the school buildings or on the school grounds under its control;

(8) Solid waste disposal project which shall include land, buildings, equipment, and improvements consisting of all or part of an area or a facility for the

disposal of solid waste, including recycling of waste materials, either publicly or privately owned or operated, and any project or program undertaken by a county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for closure, monitoring, or remediation of an existing solid waste disposal area or facility and any undivided or other interest in any of the foregoing;

(9) Any affordable housing infrastructure which shall include streets, sewers, storm drains, water, electrical and other utilities, sidewalks, public parks, public playgrounds, public swimming pools, public recreational facilities, and other community facilities, easements, and similar use rights thereof, as well as improvements preparatory to the development of housing units;

(10) Any public safety communication project, including land, buildings, equipment, easements, licenses, and leasehold interests, and any undivided or other interest in any of the foregoing, held for or on behalf of any public safety communication system owned or operated by (a) a joint entity providing public safety communications and created pursuant to the Interlocal Cooperation Act or (b) a joint public agency providing public safety communications and created pursuant to the Joint Public Agency Act; and

(11) Economic-impact projects.

Source: Laws 1983, LB 626, § 19; Laws 1984, LB 1084, § 5; Laws 1984, LB 372, § 10; Laws 1989, LB 311, § 5; Laws 1989, LB 706, § 7; Laws 1991, LB 253, § 22; Laws 1992, LB 1001, § 9; Laws 1992, LB 1257, § 69; Laws 1996, LB 1322, § 6; Laws 1999, LB 87, § 78; Laws 2002, LB 1211, § 6; Laws 2006, LB 693, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

58-219.01 Public agency, defined.

Public agency means any:

(1) County, city, or village; school, drainage, tax, improvement, or other district; local or regional housing agency; department, division, or political subdivision of this state or another state; housing agency or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state;

(2) Board, agency, commission, division, or other instrumentality of a city, village, or county; and

(3) Board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof, and in each case, any affiliates thereof.

Source: Laws 2006, LB 693, § 7.

58-239.04 Authority; economic-impact projects; powers and duties.

(1) In addition to the powers granted under section 58-239, the authority may:

(a) Borrow money and issue bonds for the purpose of financing economic-impact projects;

(b) Enter into and perform interagency and intergovernmental agreements with one or more public agencies in connection with financing or providing resources for economic-impact projects;

(c) Create, operate, manage, invest in, and own entities or other consortia created for the purpose of facilitating economic-impact projects; and

(d) Provide resources for economic-impact projects, in an amount not to exceed ten million dollars per project, including, but not limited to, making loans or providing equity through investment therein or ownership thereof or through other means or agreements.

(2) The authority may exercise any of the powers authorized by this section only after a public hearing has been held detailing the economic-impact project to be assisted and allowing for input from the public. Notice of the public hearing shall be given at least two weeks in advance of the hearing in a newspaper of general circulation within the county affected by the economic-impact project, which notice shall give a general designation of the project and identify where more detailed plans may be reviewed prior to the hearing.

Source: Laws 2006, LB 693, § 8.

58-242 Authority; agricultural projects; duties.

Prior to exercising any of the powers authorized by the Nebraska Investment Finance Authority Act regarding agricultural projects as defined in subdivision (2) of section 58-219, the authority shall require:

(1) That no loan will be made to any person with a net worth of more than five hundred thousand dollars;

(2) That the lender certify and agree that it will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase loans to provide agricultural enterprises or, if such lender has made a commitment to make loans to provide agricultural enterprises on the basis of a commitment from the authority to purchase such loans, such lender will make such loans and sell the same to the authority within a reasonable period of time;

(3) That the lender certify that the borrower is an individual who is actively engaged in or who will become actively engaged in an agricultural enterprise after he or she receives the loan or that the borrower is a firm, partnership, limited liability company, corporation, or other entity with all owners, partners, members, or stockholders thereof being natural persons who are actively engaged in or who will be actively engaged in an agricultural enterprise after the loan is received;

(4) That the aggregate amount of the loan received by a borrower shall not exceed five hundred thousand dollars. In computing such amount a loan received by an individual shall be aggregated with those loans received by his or her spouse and children and a loan received by a firm, partnership, limited liability company, or corporation shall be aggregated with those loans received by each owner, partner, member, or stockholder thereof; and

(5) That the recipient of the loan be identified in the minutes of the authority prior to or at the time of adoption by the authority of the resolution authorizing the issuance of the bonds which will provide for financing of the loan.

Source: Laws 1983, LB 626, § 42; Laws 1991, LB 253, § 43; Laws 1993, LB 121, § 356; Laws 2005, LB 90, § 17.

ARTICLE 6

NEBRASKA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

58-601 Repealed. Laws 2007, LB 136, § 11.

58-602 Repealed. Laws 2007, LB 136, § 11.

58-603 Repealed. Laws 2007, LB 136, § 11.

58-604 Repealed. Laws 2007, LB 136, § 11.

58-605 Repealed. Laws 2007, LB 136, § 11.

58-606 Repealed. Laws 2007, LB 136, § 11.

58-607 Repealed. Laws 2007, LB 136, § 11.

58-608 Repealed. Laws 2007, LB 136, § 11.

58-609 Repealed. Laws 2007, LB 136, § 11.

58-610 Act, how cited.

Sections 58-610 to 58-619 shall be known and be cited as the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 1.

58-611 Definitions.

For purposes of the Nebraska Uniform Prudent Management of Institutional Funds Act:

(1) Charitable purpose means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2007, LB136, § 2.

58-612 Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Source: Laws 2007, LB136, § 3.

58-613 Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) the duration and preservation of the endowment fund;

(2) the purposes of the institution and the endowment fund;

(3) general economic conditions;

(4) the possible effect of inflation or deflation;

(5) the expected total return from income and the appreciation of investments;

(6) other resources of the institution; and

(7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

Source: Laws 2007, LB136, § 4.

58-614 Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 5.

58-615 Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;

(2) more than twenty years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Source: Laws 2007, LB136, § 6.

58-616 Reviewing compliance.

Compliance with the Nebraska Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Source: Laws 2007, LB136, § 7.

58-617 Application to existing institutional funds.

The Nebraska Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on September 1, 2007, the act governs only decisions made or actions taken on or after that date.

Source: Laws 2007, LB136, § 8.

58-618 Relation to Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Prudent Management of Institutional Funds Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2007, but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2007, LB136, § 9.

58-619 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2007, LB136, § 10.

ARTICLE 7

NEBRASKA AFFORDABLE HOUSING ACT

Section
58-703. Affordable Housing Trust Fund; created; use.
58-706. Affordable Housing Trust Fund; eligible activities.
58-708. Department of Economic Development; selection of projects to receive assistance; duties.

58-703 Affordable Housing Trust Fund; created; use.

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources, except that before appropriations from the General Fund may be used as a revenue source for the Affordable Housing Trust Fund or for administrative costs of the Department of Economic Development in administering the fund, such use must be specifically authorized by a separate legislative bill passed in a legislative session subsequent to the Ninety-fourth Legislature, Second Session, 1996. Any initial appropriation from the General Fund which is used as a revenue source for the Affordable Housing Trust Fund or for administrative costs shall be in an appropriations bill which does not

contain appropriations for other programs. The department as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund and the Behavioral Health Services Fund at the direction of the Legislature. The State Treasurer shall make transfers from the Affordable Housing Trust Fund to the General Fund according to the following schedule: (1) $1,500,000 on or after July 1, 2005, but no later than July 10, 2005; and (2) $1,500,000 on or after July 1, 2006, but no later than July 10, 2006. The State Treasurer shall transfer $2,000,000 from the Affordable Housing Trust Fund to the Behavioral Health Services Fund on or after July 1, 2005, but not later than July 10, 2005.

Source: Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1.

58-706 Affordable Housing Trust Fund; eligible activities.

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

(1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;

(2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;

(3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;

(4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;

(5) Mortgage insurance guarantees for eligible projects;

(6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;

(7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

(8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;

(9) Infrastructure projects necessary for the development of affordable housing;

(10) Downpayment and closing cost assistance; and

(11) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:

(a) Preparing potential home buyers to purchase affordable housing and postpurchase education;

(b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and

(c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing.

Source: Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2.

58-708 Department of Economic Development; selection of projects to receive assistance; duties.

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than twenty-five percent, to each congressional district. Entitlement area funds allocated under this section that are not awarded to an eligible project from within the entitlement area within one year shall be made available for distribution to eligible projects elsewhere in the state. The department shall announce a grant and loan application period of at least ninety days duration for all nonentitlement areas. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

Source: Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3.

CHAPTER 59
MONOPOLIES AND UNLAWFUL COMBINATIONS

ARTICLE 15
CIGARETTE SALES

(a) UNFAIR CIGARETTE SALES ACT

(a) UNFAIR CIGARETTE SALES ACT

59-1502 Terms, defined.

As used in the Unfair Cigarette Sales Act, unless the context otherwise requires:

(1) Person shall mean and include any individual, firm, association, company, partnership, limited liability company, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator;

(2) Cigarettes shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco;

(3) Sale shall mean any transfer for a consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(4) Wholesaler shall include any person who:

(a) Purchases cigarettes directly from the manufacturer;

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing in the Unfair Cigarette Sales Act shall prevent a person from qualifying in different capacities as both a wholesaler and retailer under the applicable provisions of the act;

(5) Retailer shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail, including sales through vending machines;

(6) Sell at retail, sale at retail, and retail sales shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use, including sales through vending machines;

(7) Sell at wholesale, sale at wholesale, and wholesale sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale;

(8) Basic cost of cigarettes shall mean the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, without subtracting any discounts, to which shall be added the full value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality of this state in effect or hereafter enacted, if not already included by the manufacturer in his or her list price;

(9) Division shall mean the cigarette tax division of the Tax Commissioner; and

(10) Business day shall mean any day other than a Sunday or legal holiday.

Source: Laws 1965, c. 364, § 2, p. 1184; Laws 1967, c. 378, § 1, p. 1187; Laws 1987, LB 730, § 26; Laws 1993, LB 121, § 377; Laws 2008, LB898, § 1.
Effective date July 18, 2008.

Cross References

For cigarette tax, see Chapter 77, article 26.

59-1505 Sale of cigarettes; cost to wholesaler; filing with division.

(1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler, as evidenced by the standards and methods of accounting regularly employed by him or her in his or her allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(2) In the absence of the filing with the division of satisfactory proof of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler shall be presumed to be four and three-quarters percent of the basic cost of cigarettes to the wholesaler.

Source: Laws 1965, c. 364, § 5, p. 1188; Laws 2008, LB898, § 2.
Effective date July 18, 2008.

ARTICLE 16

CONSUMER PROTECTION ACT

59-1608.02 Repealed. Laws 2006, LB 1061, § 29.

59-1608.03 Recovery under act; Attorney General; duties.

When the Attorney General, on behalf of a state agency or political subdivision, is authorized to investigate, file suit, or otherwise take action in connection with violations under the Consumer Protection Act, any recovery of damages or costs by judgment, court decree, settlement in or out of court, or other final result shall be subject to the following:

(1) Upon recovery of damages or any monetary payment, except criminal penalties, the costs, expenses, or billings incurred by any state agency or political subdivision in any investigation or other action arising out of a violation under the act shall be sought out in any judgment, court decree, settlement in or out of court, or other final result. Any recovered costs shall be deposited by the Attorney General in the fund from which such costs were expended;

(2) When the Attorney General makes recovery pursuant to the act on behalf of a state agency or political subdivision of any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, such money, funds, securities, or other things of value shall be deposited by the Attorney General in the fund from which the funds which are being recovered were expended;

(3) Except as otherwise provided by law, the State Settlement Cash Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments; and

(4) Except as otherwise provided by law, the State Settlement Trust Fund shall consist of all recoveries received pursuant to the act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments.

Source: Laws 2006, LB 1061, § 3.

59-1608.04 State Settlement Cash Fund; created; use; investment.

The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the fund shall be subject to legislative review and shall be appropriated and expended for any allowable legal purposes as determined by the Legislature. The fund shall only be appropriated to a separate and distinct budget program and such appropriations shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 4.

Cross References

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

59-1608.05 State Settlement Trust Fund; created; use; investment.

The State Settlement Trust Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery shall be by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General, but to include only those funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. All money in the State Settlement Trust Fund shall be subject to legislative review, but shall not be subject to legislative appropriation. The fund shall be expended consistent with any legal restrictions placed on the funds. The fund shall be paid from the same budget program used to record revenue and expenditures of the State Settlement Cash Fund, except that the fund shall only be expended from a separate and distinct budget subprogram and shall not be commingled with any other revenue or expenditure. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other

separate sources credited to the fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1061, § 5.

Cross References

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

59-1623 Act, how cited.

Sections 59-1601 to 59-1622 shall be known and may be cited as the Consumer Protection Act.

Source: Laws 1974, LB 1028, § 30; Laws 2002, LB 1278, § 33; Laws 2006, LB 1061, § 2.