CHAPTER 1
ACCOUNTANTS

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1-105 Act, how cited.

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

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp.,1996, § 1-169; Laws 1997, LB 114, § 1; Laws 2009, LB31, § 1.
Operative date September 1, 2010.

1-106 Terms, defined.

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

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

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

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

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

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

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

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

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

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3; Laws 2009, LB31, § 2.
Operative date September 1, 2010.

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

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

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

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

Source: Laws 1957, c. 1, § 4, p. 57; Laws 1981, LB 92, § 2; Laws 1994, LB 1005, § 1; Laws 1997, LB 114, § 7; Laws 2009, LB31, § 3. Operative date September 1, 2010.

1-110 Board member; salary; expenses.

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

Source: Laws 1957, c. 1, § 5, p. 57; Laws 1961, c. 2, § 1, p. 61; Laws 1981, LB 204, § 1; Laws 1981, LB 92, § 3; Laws 1997, LB 114, § 8; Laws 2009, LB31, § 4.
Operative date September 1, 2010.

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

(1) All fees collected under the Public Accountancy Act and all costs collected under subdivision (8) of section 1-148 shall be remitted by the board to the State Treasurer for credit to the Certified Public Accountants Fund which is hereby created. Such fund shall, if and when specifically appropriated by the Legislature during any biennium for that purpose, be paid out from time to time by the State Treasurer upon warrants drawn by the Director of Administrative Services on vouchers approved by the board, and such board and expense thereof shall not be supported or paid from any other fund of the state. Any money in the Certified Public Accountants Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The board shall remit civil penalties collected under subdivision (5) of section 1-148 to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1957, c. 1, § 6, p. 57; Laws 1969, c. 1, § 1, p. 61; Laws 1969, c. 584, § 24, p. 2356; Laws 1994, LB 957, § 2; Laws 1995, LB 7, § 1; Laws 1997, LB 114, § 9; Laws 2009, LB31, § 5. Operative date September 1, 2010.

Cross References

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

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

(1) Prior to January 1, 1998, the board shall issue a certificate of certified public accountant to any person (a) who is a resident of this state or has a place of business therein or, as an employee, is regularly employed therein, (b) who has graduated from a college or university of recognized standing, and (c) who

has passed a written examination in accounting, auditing, and such other related subjects as the board determines to be appropriate.

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

Source: Laws 1957, c. 1, § 9, p. 58; Laws 1963, c. 1, § 1, p. 59; Laws 1974, LB 811, § 1; Laws 1977, LB 290, § 1; Laws 1984, LB 473, § 4; Laws 1991, LB 75, § 3; Laws 1997, LB 114, § 12; Laws 2003, LB 214, § 1; Laws 2009, LB31, § 6.
Operative date September 1, 2010.

1-116 Certified public accountant; examination; eligibility.

Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114.

Any person making initial application on or after January 1, 1998, to take the examination described in section 1-114 shall be eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by the North Central Association of Colleges and Universities or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this section within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this section is received by the board within ninety days following when the examination is held. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1; Laws 2009, LB31, § 7.
Operative date September 1, 2010.

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

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

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

Source: Laws 1957, c. 1, § 13, p. 59; Laws 1976, LB 619, § 4; Laws 1984, LB 473, § 8; Laws 1991, LB 75, § 7; Laws 1997, LB 114, § 15; Laws 2003, LB 214, § 2; Laws 2009, LB31, § 8.
Operative date September 1, 2010.

1-119 Certified public accountant; examination fee.

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

Source: Laws 1957, c. 1, § 14, p. 60; Laws 1976, LB 619, § 5; Laws 1976, LB 961, § 1; Laws 1979, LB 278, § 1; Laws 1984, LB 473, § 9; Laws 1991, LB 75, § 8; Laws 1997, LB 114, § 16; Laws 2003, LB 214, § 3; Laws 2009, LB31, § 9.
Operative date September 1, 2010.

1-120 Certified public accountant; reexamination fee.

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

Source: Laws 1957, c. 1, § 15, p. 60; Laws 1976, LB 619, § 6; Laws 1979, LB 278, § 2; Laws 1984, LB 473, § 10; Laws 1991, LB 75, § 9; Laws 1997, LB 114, § 17; Laws 2003, LB 214, § 4; Laws 2009, LB31, § 10.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 17, p. 60; Laws 1984, LB 473, § 11; Laws 1997, LB 114, § 19; Laws 2009, LB31, § 11.
Operative date September 1, 2010.

1-123 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

1-125 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

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

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

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

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

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

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

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

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

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

Source: Laws 2009, LB31, § 12.
Operative date September 1, 2010.

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

(1) The board may, in its discretion, grant a person who holds a certificate, degree, or license in a foreign country constituting a recognized qualification

for the practice of public accountancy in such country, and who does not hold a certificate or permit issued by this state or any other state and whose principal place of business is outside this state, the privilege to temporarily practice in this state on professional business incident to his or her regular practice outside this state, if such privilege to temporarily practice is conducted in conformity with the rules and regulations of the board.

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

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

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

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

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

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

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

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

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

Source: Laws 2009, LB31, § 13.
Operative date September 1, 2010.

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

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

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

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

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

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

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

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

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

Source: Laws 1957, c. 1, § 21, p. 61; Laws 1993, LB 121, § 46; Laws 1994, LB 957, § 3; Laws 1997, LB 114, § 23; Laws 2009, LB31, § 14.
Operative date September 1, 2010.

1-133 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

1-134 Public accountant; corporation; registration.

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

Source: Laws 1957, c. 1, § 29, p. 64; Laws 1971, LB 858, § 2; Laws 1997, LB 114, § 25; Laws 2009, LB31, § 15.
Operative date September 1, 2010.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

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

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

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

Source: Laws 1957, c. 1, § 30, p. 64; Laws 1976, LB 961, § 3; Laws 1979, LB 278, § 4; Laws 1984, LB 473, § 16; Laws 1993, LB 121, § 48; Laws 1994, LB 957, § 5; Laws 1997, LB 114, § 26; Laws 2003, LB 214, § 6; Laws 2003, LB 258, § 1; Laws 2009, LB31, § 16. Operative date September 1, 2010.

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

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

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

(b) The board shall charge a biennial permit fee as established by the board not to exceed three hundred dollars for permits issued under subdivision (1)(a) of this section. All permits subject to this subdivision shall expire on June 30 of

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

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

(4) Any certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit and who is not actively engaged in the practice of public accountancy in this state may file a written application with the board to be classified as inactive. A person so classified shall not be issued a permit or be deemed the holder of a permit but shall be carried upon an inactive roll to be maintained by the board upon the payment of an inactive fee as established by the board not to exceed fifty percent of the fee charged persons actively engaged in the practice of public accountancy as provided in this section. A person so classified shall not be deprived of the right to the issuance or renewal of a permit and may, upon application to the board and upon payment of the current permit fee, be issued a current permit.

Source: Laws 1957, c. 1, § 31, p. 65; Laws 1959, c. 1, § 1, p. 57; Laws 1976, LB 961, § 4; Laws 1977, LB 290, § 4; Laws 1979, LB 278, § 5; Laws 1981, LB 92, § 4; Laws 1984, LB 473, § 17; Laws 1986, LB 869, § 1; Laws 1993, LB 121, § 49; Laws 1997, LB 114, § 27; Laws 2003, LB 214, § 7; Laws 2009, LB31, § 17.
Operative date September 1, 2010.

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

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

(2) In determining compliance with the professional development requirement, the board may include credits earned during the current calendar year in addition to those earned in the preceding calendar years in which professional development is required under subsection (1) of this section. If such credits are

included they shall not count toward the next succeeding permit renewal requirement.

Source: Laws 1971, LB 858, § 3; Laws 1979, LB 278, § 6; Laws 1984, LB 473, § 18; Laws 1997, LB 114, § 28; Laws 2009, LB31, § 18. Operative date September 1, 2010.

1-136.02 Permit; when issued.

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

(a) Two years of public accounting experience satisfactory to the board, in any state, (i) in practice as a certified public accountant, (ii) in employment as a staff accountant by anyone engaging in the practice of public accountancy, or (iii) in any combination of either of such types of experience;

(b) Three years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue; or

(c) Experience gained through employment by the federal government as a special agent or an internal revenue agent in the Internal Revenue Service, a degree from a college or university of recognized standing, and certification by a District Director of Internal Revenue that such person has had at least three and one-half years of field experience as a special agent or internal revenue agent.

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

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

(b) At the time of the application for a permit the applicant, within the ten years immediately preceding application, has had at least two years' experience in the practice of public accountancy as a sole proprietor or as a staff accountant.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19. Operative date September 1, 2010.

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

(Operative date September 1, 2010.)

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

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

Revenue, in lieu of being a graduate from a college or university of recognized standing.

Source: Laws 1977, LB 290, § 6; Laws 1984, LB 473, § 19; Laws 1991, LB 75, § 13; Laws 1997, LB 114, § 30; Laws 2009, LB31, § 20. Operative date September 1, 2010.

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

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

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

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

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

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

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

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

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

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

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

Source: Laws 1957, c. 1, § 32, p. 66; Laws 1974, LB 811, § 2; Laws 1981, LB 92, § 5; Laws 1993, LB 41, § 3; Laws 1997, LB 114, § 31; Laws 2009, LB31, § 21.
Operative date September 1, 2010.

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

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

made by the board of accountancy or equivalent regulatory authority of another state.

Source: Laws 2009, LB31, § 23.
Operative date September 1, 2010.

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

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

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

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

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

Source: Laws 1957, c. 1, § 33, p. 67; Laws 1993, LB 41, § 4; Laws 1993, LB 121, § 50; Laws 1997, LB 114, § 32; Laws 2009, LB31, § 22.
Operative date September 1, 2010.

1-148 Disciplinary action; action of board.

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

(1) Issuance of censure or reprimand;

(2) Suspension of judgment;

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

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

(5) Imposition of a civil penalty not to exceed ten thousand dollars, except that the board shall not impose a civil penalty under this subdivision for any cause enumerated in subdivisions (5) through (9) of section 1-137 and subdivisions (1) and (2) of section 1-138. The amount of the penalty shall be based on the severity of the violation;

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

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

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

(9) Dismissal of the action.

Source: Laws 1957, c. 1, § 43, p. 70; Laws 1993, LB 41, § 6; Laws 1994, LB 957, § 6; Laws 1997, LB 114, § 39; Laws 2009, LB31, § 24.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 46, p. 71; Laws 1984, LB 473, § 20; Laws 1997, LB 114, § 41; Laws 2009, LB31, § 25.
Operative date September 1, 2010.

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

No partnership or limited liability company shall assume or use the title or designation certified public accountant or public accountant or the abbreviation C.P.A. or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or limited liability company is composed of certified public accountants unless such partnership or limited liability company is registered as a partnership of certified public accountants or a limited liability company of certified public accountants under section 1-126 and holds a permit issued under subdivision (1)(b) of section 1-136 which is not revoked or suspended and all of such partnership's or limited liability company's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 47, p. 72; Laws 1993, LB 121, § 51; Laws 1997, LB 114, § 42; Laws 2009, LB31, § 26.
Operative date September 1, 2010.

1-153 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

1-154 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

1-155 Use of terms, prohibited; exception.

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

Source: Laws 1957, c. 1, § 50, p. 73; Laws 1993, LB 121, § 53; Laws 1997, LB 114, § 45; Laws 2009, LB31, § 27.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 51, p. 73; Laws 1997, LB 114, § 46; Laws 2009, LB31, § 28.
Operative date September 1, 2010.

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

No person shall sign or affix his or her name or any trade or assumed name used by him or her in his or her profession or business with any wording indicating that he or she is an accountant or auditor or with any wording indicating that he or she has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he or she holds a permit issued under subdivision (1)(a) of section 1-136 which is not revoked or suspended and all of his or her offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135. This section shall

not prohibit any officer, employee, partner, limited liability company member, or principal of any organization from affixing his or her signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he or she holds in the organization, nor shall this section prohibit any act of a public official or public employee in the performance of his or her duties as such.

Source: Laws 1957, c. 1, § 52, p. 74; Laws 1993, LB 121, § 54; Laws 1994, LB 884, § 1; Laws 1997, LB 114, § 47; Laws 2009, LB31, § 29.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 53, p. 74; Laws 1993, LB 121, § 55; Laws 1997, LB 114, § 48; Laws 2009, LB31, § 30.
Operative date September 1, 2010.

1-159 Corporation; use of terms; requirements.

No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, except that a corporation which is registered under section 1-134 and holds a permit issued under subdivision (1)(c) of section 1-136 which is not revoked or suspended may affix its corporate name with the wording indicated above.

Source: Laws 1957, c. 1, § 54, p. 75; Laws 1997, LB 114, § 49; Laws 2009, LB31, § 31.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 56, p. 75; Laws 1993, LB 121, § 57; Laws 1997, LB 114, § 51; Laws 2009, LB31, § 32.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 57, p. 76; Laws 1993, LB 121, § 58; Laws 1997, LB 114, § 52; Laws 2009, LB31, § 33.
Operative date September 1, 2010.

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

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

(1) Such persons shall not exceed forty-nine percent of the total number of owners of such firm;

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

(3) Such persons shall not hold themselves out as certified public accountants;

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

(5) Such persons shall not have ultimate responsibility for the performance of any audit, review, or compilation of financial statements or other forms of attestation related to financial information;

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

(7) Such persons, regardless of where located, shall actively participate in the business of the firm.

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

Source: Laws 1994, LB 957, § 1; Laws 1997, LB 114, § 53; Laws 1999, LB 346, § 2; Laws 2009, LB31, § 34.
Operative date September 1, 2010.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

1-163 Repealed. Laws 2009, LB 31, § 43.
(Operative date September 1, 2010.)

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

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

Source: Laws 1984, LB 473, § 22; Laws 1997, LB 114, § 56; Laws 2009, LB31, § 35.
Operative date September 1, 2010.

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

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

Source: Laws 1984, LB 473, § 23; Laws 1993, LB 121, § 59; Laws 1997, LB 114, § 57; Laws 2009, LB31, § 36.
Operative date September 1, 2010.

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

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words certified public accountant or any abbreviation thereof or public accountant or any abbreviation thereof shall be prima facie evidence in any action brought under section 1-165 or 1-166 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement, or other printed, engraved, or written instrument or device and that such person is holding himself or herself out to be a certified public accountant holding a permit issued under section 1-136. In any such action evidence of the commission of a single act prohibited by the Public Accountancy Act shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

Source: Laws 1957, c. 1, § 62, p. 77; Laws 1997, LB 114, § 61; Laws 2009, LB31, § 37.
Operative date September 1, 2010.

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

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

Source: Laws 1957, c. 1, § 63, p. 77; Laws 1993, LB 121, § 60; Laws 1994, LB 884, § 2; Laws 2009, LB31, § 38.
Operative date September 1, 2010.

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

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

Source: Laws 1965, c. 1, § 1, p. 59; Laws 1997, LB 114, § 62; Laws 2009, LB31, § 39.
Operative date September 1, 2010.

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

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

Source: Laws 1965, c. 1, § 2, p. 59; Laws 1997, LB 114, § 63; Laws 2009, LB31, § 40.
Operative date September 1, 2010.

CHAPTER 2
AGRICULTURE

Article.
1. Nebraska State Fair Board. 2-101 to 2-131.
9. Noxious Weed Control. 2-958.01 to 2-968.
12. Horseracing. 2-1208.01.
15. Nebraska Natural Resources Commission.
(c) Nebraska Resources Development Fund. 2-1588.
26. Pesticides. 2-2629 to 2-2646.
32. Natural Resources. 2-3226.10 to 2-32,115.
42. Conservation Corporation. 2-4214.
48. Farm Mediation. 2-4801, 2-4816.
49. Climate Assessment. 2-4901.
51. Buffer Strip Act. 2-5106.
54. Agricultural Opportunities and Value-Added Partnerships Act. 2-5413.

ARTICLE 1
NEBRASKA STATE FAIR BOARD

Section
2-101. Nebraska State Fair Board; purpose; meetings; state fair; location; plan to relocate.
2-109. Report regarding lottery revenue.
2-110. Matching fund requirements.
2-111. Annual report.
2-113. Transfer of Nebraska State Fairgrounds; conditions; Nebraska State Fair relocated to city of Grand Island; Nebraska State Fair Board; duties.
2-131. Repealed. Laws 2009, LB 224, § 10.

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

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

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

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

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

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

Source: Laws 1879, § 1, p. 396; Laws 1883, c. 1, § 1, p. 57; Laws 1899, c. 1, § 1, p. 51; R.S.1913, § 1; C.S.1922, § 1; C.S.1929, § 2-101; Laws 1937, c. 1, § 1, p. 51; C.S.Supp.,1941, § 2-101; Laws 1943, c. 2, § 1, p. 55; R.S.1943, § 2-101; Laws 1981, LB 544, § 1; Laws 1983, LB 30, § 1; Laws 2002, LB 1236, § 2; Laws 2004, LB 821, § 1; Laws 2008, LB1116, § 1; Laws 2009, LB224, § 1.
Operative date May 23, 2009.

Cross References

Open Meetings Act, see section 84-1407.

2-109 Report regarding lottery revenue.

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

county. The department shall provide a copy of the written notification to the Department of Administrative Services.

Source: Laws 2005, LB 426, § 5; Laws 2009, LB224, § 2.
Operative date May 23, 2009.

2-110 Matching fund requirements.

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

Source: Laws 2005, LB 426, § 6; Laws 2009, LB224, § 3.
Operative date May 23, 2009.

2-111 Annual report.

The Nebraska State Fair Board shall, no later than November 1 of each year, provide an annual report to the Governor and the Legislature regarding the use of the Nebraska State Fair Support and Improvement Cash Fund. The report shall include (1) a detailed listing of how the proceeds of the fund were expended in the prior fiscal year and (2) any distributions from the fund that remain unexpended and on deposit in Nebraska State Fair accounts.

Source: Laws 2005, LB 426, § 7; Laws 2007, LB435, § 2; Laws 2009, LB224, § 4.
Operative date May 23, 2009.

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

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

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

(a) Funds for the purpose of carrying out subsection (4) of section 2-101 having been provided by or on behalf of the University of Nebraska in a total amount of no less than twenty-one million five hundred thousand dollars in cash or legally binding commitments. Such funds may be provided over time,

but they shall in cumulative increments equal at least seven million five hundred thousand dollars by October 1, 2008, fourteen million five hundred thousand dollars by February 1, 2009, and twenty-one million five hundred thousand dollars by July 1, 2009;

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

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

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

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

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

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

Source: Laws 2008, LB1116, § 6; Laws 2009, LB224, § 5.
Operative date May 23, 2009.

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

ARTICLE 9
NOXIOUS WEED CONTROL

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

Section
2-958.02. Grant program; applications; selection; considerations; priority; section, how construed; director; duties.
2-967. Riparian Vegetation Management Task Force; created; members.
2-968. Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

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

The Noxious Weed and Invasive Plant Species Assistance Fund is created. The fund may be used to carry out the purposes of section 2-958.02. The State Treasurer shall credit to the fund any funds transferred or appropriated to the fund by the Legislature and funds received as gifts or grants or other private or public funds obtained for the purposes set forth in section 2-958.02. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 869, § 4; Laws 2008, LB961, § 1; Laws 2009, LB98, § 1.
Effective date May 14, 2009.

Cross References

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

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed; director; duties.

(1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director

if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with vegetation management goals and priorities and plans and policies of the Riparian Vegetation Management Task Force created pursuant to section 2-968. Beginning in fiscal year 2009-10, it is the intent of the Legislature to appropriate two million dollars annually for the management of vegetation within the banks of a natural stream or within one hundred feet of the banks of a channel of any natural stream. Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts, whose territory includes one or more fully appropriated or overappropriated river basins as designated by the Department of Natural Resources with priority given to fully appropriated river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects. This subsection terminates on June 30, 2013.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the

duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

(7)(a) The director shall apply for a grant from the Nebraska Environmental Trust Fund prior to the application deadline in September of 2009 for grants to be awarded and funded in April of 2010.

(b) The director shall apply for a grant from the Natural Resources Conservation Service of the United States Department of Agriculture prior to July 31, 2009.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4; Laws 2009, LB98, § 2.
Effective date May 14, 2009.

Cross References

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

2-967 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has been determined to be fully appropriated pursuant to section 46-714 or 46-720 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; two representatives nominated by the Nebraska Association of Resources Districts; two representatives nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture. This section terminates on June 30, 2013.

Source: Laws 2007, LB701, § 1; Laws 2009, LB98, § 3.
Effective date May 14, 2009.
Termination date June 30, 2013.

2-968 Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. The efforts of the task force shall be initially directed toward river basins designated by the Department of Natural

Resources as fully appropriated or overappropriated. Task force meetings shall be held in communities within the Republican River and Platte River basins with a final report due to the Governor and the Legislature prior to June 30, 2013. It is the intent of the Legislature that expenses of the task force not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2013.

Source: Laws 2007, LB701, § 2; Laws 2009, LB98, § 4.
Effective date May 14, 2009.
Termination date June 30, 2013.

ARTICLE 12
HORSERACING

Section
2-1208.01. Parimutuel wagering; tax; rates; return.

2-1208.01 Parimutuel wagering; tax; rates; return.

(1) There is hereby imposed a tax on the gross sum wagered by the parimutuel method at each race enclosure during a calendar year as follows:

(a) The first ten million dollars shall not be taxed;

(b) Any amount over ten million dollars but less than or equal to seventy-three million dollars shall be taxed at the rate of two and one-half percent; and

(c) Any amount in excess of seventy-three million dollars shall be taxed at the rate of four percent.

(2)(a) Except as provided in subdivision (2)(b) of this section, an amount equal to two percent of the first taxable seventy million dollars at each race meeting shall be retained by the licensee for capital improvements and for maintenance of the premises within the licensed racetrack enclosure and shall be a credit against the tax levied in subsection (1) of this section. This subdivision includes each race meeting held after January 1, 2010, within the licensed racetrack enclosure located in Lancaster County where the Nebraska State Fair was held prior to 2010.

(b) For race meetings conducted at the location where the Nebraska State Fair is held, an amount equal to two and one-half percent of the first taxable seventy million dollars at each race meeting shall be retained by the licensee for the purpose of maintenance of the premises within the licensed racetrack enclosure and maintenance of other buildings, streets, utilities, and existing improvements at the location where the Nebraska State Fair is held. Such amount shall be a credit against the tax levied in subsection (1) of this section.

(3) A return as required by the Tax Commissioner shall be filed for a racetrack enclosure for each month during which wagers are accepted at the enclosure. The return shall be filed with and the net tax due pursuant to this section shall be paid to the Department of Revenue on the tenth day of the following month.

Source: Laws 1959, c. 5, § 3, p. 73; Laws 1963, c. 6, § 2, p. 67; Laws 1965, c. 9, § 2, p. 124; Laws 1973, LB 76, § 2; Laws 1982, LB 631, § 2; Laws 1984, LB 830, § 2; Laws 1985, LB 154, § 1; Laws 1986, LB 1041, § 5; Laws 1987, LB 467, § 1; Laws 1989, LB 591,

§ 3; Laws 1990, LB 1055, § 2; Laws 1993, LB 365, § 1; Laws 2002, LB 1236, § 13; Laws 2009, LB224, § 6.
Operative date January 1, 2010.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

Section
2-1588. Fund; allocation; report; projects; costs.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1588 Fund; allocation; report; projects; costs.

(1) Any money in the Nebraska Resources Development Fund may be allocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources. Such money may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report shall include a complete financial statement. Each member of the Legislature shall receive a copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp.,1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB179, § 1.
Effective date February 13, 2009.

ARTICLE 26

PESTICIDES

Section
2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.
2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.

Section
2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.
2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process.
2-2641. Private applicator; qualifications; application for license; requirements; fee.
2-2645. Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.
2-2646. Prohibited acts.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant, including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1. Effective date August 30, 2009.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2006, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2.
Effective date August 30, 2009.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3.
Effective date August 30, 2009.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4. Effective date August 30, 2009.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's social security number and date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5.
Effective date August 30, 2009.

2-2645 Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.

(1) A person claiming damages from a pesticide use may file with the department a written report claiming that the person has been damaged. The

report shall be filed as soon as possible following the day of the alleged occurrence.

(2) Except as otherwise provided in the Pesticide Act, upon receipt of a report if the department has reasonable cause to believe that a violation of the act has occurred, it shall investigate such report to determine if any violation has occurred and if any further enforcement action shall be taken under the act. The department is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the damages, is outside the scope of the Pesticide Act, or is frivolous or minor. If a complaint is investigated, the department shall notify the licensee, owner, or lessee of the property on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person upon written request.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to observe, within reasonable hours, the property alleged to have been damaged.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report or cooperate with the department and is the only person claiming injury from the particular use of a pesticide, the department may, if in the public interest, refuse to take action or hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

Source: Laws 1993, LB 588, § 24; Laws 2002, LB 436, § 23; Laws 2009, LB100, § 6.
Effective date August 30, 2009.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an

antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to pay all fees and penalties as prescribed by the act and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7. Effective date August 30, 2009.

Cross References

Environmental Protection Act, see section 81-1532.

ARTICLE 32
NATURAL RESOURCES

Section
2-3226.10. Flood protection and water quality enhancement bonds; authorized; natural resources district; powers and duties; special bond levy authorized.
2-3226.11. Flood protection and water quality enhancement bonds; use of proceeds; certain projects; county board; powers.

Section
2-3226.12. Flood protection and water quality enhancement bonds; warrants authorized.
2-3226.13. Flood protection and water quality enhancement bonds; fees to fiscal agents authorized; warrants and bonds; conditions.
2-3226.14. Flood protection and water quality enhancement bonds; authority to issue; termination.
2-3234. Districts; eminent domain; powers.
2-3290.01. Water project; public use; public access; district; duties; conditions.
2-32,115. Immediate temporary stay imposed by natural resources district; department; powers and duties.

2-3226.10 Flood protection and water quality enhancement bonds; authorized; natural resources district; powers and duties; special bond levy authorized.

In addition to other powers authorized by law, the board of directors of a natural resources district encompassing a city of the metropolitan class, upon an affirmative vote of two-thirds of the members of the board of directors, may issue negotiable bonds and refunding bonds of the district, entitled flood protection and water quality enhancement bonds, with terms determined appropriate by the board of directors, payable from an annual special flood protection and water quality enhancement bond levy upon the taxable value of all taxable property in the district. Such special bond levy is includable in the computation of other limitations upon the district's tax levy and shall not exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district without approval by a majority of registered voters of the district at an election in accordance with the Election Act called by the board of directors and held in conjunction with a statewide primary or general election.

Source: Laws 2009, LB160, § 1.
Effective date August 30, 2009.

Cross References

Election Act, see section 32-101.

2-3226.11 Flood protection and water quality enhancement bonds; use of proceeds; certain projects; county board; powers.

(1) The proceeds of bonds issued pursuant to section 2-3226.10 shall be used to pay costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water management within the natural resources district issuing such bonds, including flood control and water quality. For purposes of this section, flood control and water quality projects and practices include, but are not limited to, low-impact development best management measures, flood plain buyout, dams, reservoir basins, and levees. The proceeds of bonds issued pursuant to section 2-3226.10 shall not be used to fund combined sewer separation projects in a city of the metropolitan class. No project for which bonds are issued under section 2-3226.10 shall include a reservoir or water quality basin having a permanent pool greater than four hundred surface acres. Any project having a permanent pool greater than twenty surface acres shall provide for public access.

(2) A district shall only convey real property that is acquired for a project described in subsection (1) of this section by eminent domain proceedings

pursuant to sections 76-704 to 76-724 to a political subdivision or an agency of state or federal government.

(3)(a) Prior to the issuing of bonds pursuant to section 2-3226.10 or expending funds of a natural resources district encompassing a city of the metropolitan class to pay costs of a reservoir or water quality basin project or projects greater than twenty surface acres, a county board of the affected county may pass a resolution stating that it does not approve of the construction of such reservoir or water quality basin project or projects within its exclusive zoning jurisdiction. The county board shall hold a public hearing and shall vote on the resolution within ninety days after notice from the board of directors of the natural resources district of its intent to issue bonds.

(b) No proceeds from bonds issued pursuant to section 2-3226.10 or funds of a natural resources district encompassing a city of the metropolitan class may be used to pay costs of a reservoir or water quality basin project or projects greater than twenty surface acres if the county board of the affected county passes such a resolution.

(c) Sections 2-3226.10 to 2-3226.14 do not (i) limit the authority of a natural resources district with regard to reservoirs, water quality basin projects, or other projects of less than twenty surface acres or (ii) prohibit use of funds of a natural resources district for preliminary studies or reports necessary, in the discretion of the board of directors of the natural resources district, to determine whether a reservoir or water quality basin project should be presented to a county board pursuant to this section.

(4) Proceeds of bonds issued pursuant to section 2-3226.10 shall not be used to fund any project in any city or county (a) located within a watershed in which is located a city of the metropolitan class and (b) which is party to an agreement under the Interlocal Cooperation Act, unless such city or county has adopted a storm water management plan approved by the board of directors of the natural resources district encompassing a city of the metropolitan class.

(5) A natural resources district encompassing a city of the metropolitan class shall only issue bonds for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal flood plain management rules and regulations.

Source: Laws 2009, LB160, § 2.
Effective date August 30, 2009.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-3226.12 Flood protection and water quality enhancement bonds; warrants authorized.

For the purpose of making partial payments, the board of directors of a natural resources district issuing bonds pursuant to section 2-3226.10 may issue warrants having terms as determined appropriate by the board, payable from the proceeds of such bonds.

Source: Laws 2009, LB160, § 3.
Effective date August 30, 2009.

2-3226.13 Flood protection and water quality enhancement bonds; fees to fiscal agents authorized; warrants and bonds; conditions.

The board of directors of a natural resources district issuing bonds pursuant to section 2-3226.10 may agree to pay fees to fiscal agents in connection with the placement of warrants or bonds of the district. Such warrants and bonds shall be subject to the same conditions as provided by section 2-3254.07 for improvement project area bonds and such other conditions as the board of directors determines appropriate.

Source: Laws 2009, LB160, § 4.
Effective date August 30, 2009.

2-3226.14 Flood protection and water quality enhancement bonds; authority to issue; termination.

The authority to issue bonds for qualified projects granted in section 2-3226.10 terminates on December 31, 2019, except that (1) any bonds already issued and outstanding for qualified projects as of such date are permitted to remain outstanding and the district shall retain all powers of taxation provided for in section 2-3226.10 to provide for the payment of principal and interest on such bonds and (2) refunding bonds may continue to be issued and outstanding as of December 31, 2019, including extension of principal maturities if determined appropriate.

Source: Laws 2009, LB160, § 5.
Effective date August 30, 2009.

2-3234 Districts; eminent domain; powers.

Except as provided in section 2-3226.11, each district shall have the power and authority to exercise the power of eminent domain when necessary to carry out its authorized purposes within the limits of the district or outside its boundaries. Exercise of eminent domain shall be governed by the provisions of sections 76-704 to 76-724, except that whenever any district seeks to acquire the right to interfere with the use of any water being used for power purposes in accordance with sections 46-204, 70-668, 70-669, and 70-672 and is unable to agree with the user of such water upon the compensation to be paid for such interference, the procedure to condemn property shall be followed in the manner set forth in sections 76-704 to 76-724 and no other property shall be included in such condemnation. No district shall contract for delivery of water to persons within the corporate limits of any village, city, or metropolitan utilities district, nor in competition therewith outside such corporate limits, except by consent of and written agreement with the governing body of such political subdivision. A village, city, or metropolitan utilities district may negotiate and, if necessary, exercise the power of eminent domain for the acquisition of water supply facilities of the district which are within its boundaries.

Source: Laws 1969, c. 9, § 34, p. 122; Laws 1972, LB 543, § 12; Laws 1994, LB 480, § 13; Laws 1998, LB 896, § 8; Laws 1999, LB 436, § 8; Laws 2009, LB160, § 6.
Effective date August 30, 2009.

2-3290.01 Water project; public use; public access; district; duties; conditions.

(1) A district shall permit public use of those portions of a water project located on lands owned by the district and on land over which the district has a lease or an easement permitting use thereof for public recreational purposes.

All recreational users of such portions of a water project shall abide by the applicable rules and regulations adopted and promulgated by the board.

(2) The district shall provide public access for recreational use at designated access points at any water project. Recreational users, whether public or private, shall abide by all applicable rules and regulations for use of the water project adopted and promulgated by the district or the political subdivision in which the water project is located. Public recreational users may only access the water project through such designated access points. Nothing in this subsection shall require public access when the portion of the project cost paid by the natural resources district with public funds does not exceed twenty percent of the total cost of the project.

(3) For purposes of this section, water project means a project with cooperators or others, as authorized in section 2-3235, that results in construction of a reservoir or other body of water having a permanent pool suitable for recreational purposes greater than one hundred fifty surface acres, the construction of which commenced after July 14, 2006. Water project shall not mean soil conservation projects, wetlands projects, projects described in section 2-3226.11, or other district projects with cooperators or others that do not have a recreational purpose.

(4) For projects funded under section 2-3226.11 that result in a reservoir or other body of water having a permanent pool suitable for recreational purposes greater than twenty surface acres, the district shall provide public access for recreational use at designated access points and shall include access to the land area a minimum distance of one hundred feet from the permanent pool. Recreational users, whether public or private, shall abide by all applicable rules, regulations, ordinances, or resolutions for use of the project adopted by the district or the political subdivision in which the project is located. Public recreational users may only access the project through such designated access points.

Source: Laws 2006, LB 1113, § 14; Laws 2009, LB160, § 7.
Effective date August 30, 2009.

2-32,115 Immediate temporary stay imposed by natural resources district; department; powers and duties.

(1) Whenever a natural resources district imposes an immediate temporary stay for one hundred eighty days in accordance with subsection (2) of section 46-707, the department may place an immediate temporary stay without prior notice or hearing on the issuance of new surface water natural-flow appropriations for one hundred eighty days in the area, river basin, subbasin, or reach of the same area included in the natural resources district's temporary stay, except that the department shall not place a temporary stay on new surface water natural-flow appropriations that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health or safety.

(2) The department shall hold at least one public hearing on the matter within the affected area within the period of the one-hundred-eighty-day temporary stay, with the notice of hearing given as provided in section 46-743, prior to making a determination as to imposing a stay or conditions in accordance with section 46-234 and subsection (11) of section 46-714. The department may

hold the public hearing in conjunction with the natural resources district's hearing.

(3) Within forty-five days after a hearing pursuant to this section, the department shall decide whether to exempt from the immediate temporary stay the issuance of appropriations for which applications were pending prior to the declaration commencing the stay but for which the application was not approved prior to such date, to continue the stay, or to allow the issuance of new surface water appropriations.

Source: Laws 2007, LB701, § 16; Laws 2009, LB483, § 1.
Effective date April 7, 2009.

ARTICLE 42
CONSERVATION CORPORATION

Section
2-4214. Duties; enumerated.

2-4214 Duties; enumerated.

The corporation shall have the following duties:

(1) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America; obligations issued by agencies of the United States of America; obligations of this state or of any political subdivision except obligations of sanitary and improvement districts organized under Chapter 31, article 7; certificates of deposit of banks whose deposits are insured or guaranteed by the Federal Deposit Insurance Corporation or collateralized by deposit of securities with the secretary-treasurer of the corporation, as, and to the extent not covered by insurance or guarantee, with securities which are eligible for securing the deposits of the state or counties, school districts, cities, or villages of the state; certificates of deposit of capital stock financial institutions as provided by section 77-2366; certificates of deposit of qualifying mutual financial institutions as provided by section 77-2365.01; repurchase agreements which are fully secured by any of such securities or obligations which may be unsecured and unrated, including investment agreements, of any corporation, national bank, capital stock financial institution, qualifying mutual financial institution, bank holding company, insurance company, or trust company which has outstanding debt obligations which are rated by a nationally recognized rating agency in one of the three highest rating categories established by such rating agency; or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to subsection (1) of section 77-2341;

(2) To collect fees and charges the corporation determines to be reasonable in connection with its loans, advances, insurance commitments, and servicing;

(3) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agencies;

(4) To sell, assign, or otherwise dispose of at public or private sale, with or without public bidding, any mortgage or other obligations held by the corporation; and

(5) To do any act necessary or convenient to the exercise of the powers granted by the Conservation Corporation Act or reasonably implied from it.

Source: Laws 1981, LB 385, § 14; Laws 1985, LB 387, § 9; Laws 1989, LB 33, § 2; Laws 1989, LB 221, § 1; Laws 2001, LB 362, § 3; Laws 2009, LB259, § 1.
Effective date March 6, 2009.

ARTICLE 48
FARM MEDIATION

Section
2-4801. Act, how cited.
2-4816. Repealed. Laws 2009, LB 101, § 3.

2-4801 Act, how cited.

Sections 2-4801 to 2-4815 shall be known and may be cited as the Farm Mediation Act.

Source: Laws 1988, LB 664, § 1; Laws 2009, LB101, § 1.
Effective date February 27, 2009.

2-4816 Repealed. Laws 2009, LB 101, § 3.

ARTICLE 49
CLIMATE ASSESSMENT

Section
2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.

2-4901 Climate Assessment Response Committee; created; members; expenses; meetings.

(1) The Climate Assessment Response Committee is hereby created. The office of the Governor shall be the lead agency and shall oversee the committee and its activities. The committee shall be composed of representatives appointed by the Governor with the approval of a majority of the Legislature from livestock producers, crop producers, the Nebraska Emergency Management Agency, and the Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska. The Director of Agriculture or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, and the Director of Natural Resources or his or her designee shall be ex officio members of the committee. Representatives from the federal Consolidated Farm Service Agency and Federal Crop Insurance Corporation may also serve on the committee at the invitation of the Governor. The chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature shall be nonvoting, ex officio members of the committee. The Governor may appoint a member of the Governor's Policy Research Office and any other state agency representatives or invite any other federal agencies to name representatives as he or she deems necessary. The Governor shall appoint one of the Climate Assessment Response Committee members to serve as the chairperson of the committee. Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The committee shall meet at least twice each year and shall meet more frequently (a) at the call of the chairperson, (b) upon request of a majority of the committee members, and (c) during periods of drought or other severe climate situations.

(3) The chairperson may establish subcommittees and may invite representatives of agencies other than those with members on the committee to serve on such subcommittees.

(4) Any funds for the activities of the committee and for other climate-related expenditures may be appropriated directly to the office of the Governor for contracting with other agencies or persons for tasks approved by the committee.

Source: Laws 1992, LB 274, § 1; Laws 1996, LB 43, § 1; Laws 1996, LB 1044, § 43; Laws 1999, LB 403, § 5; Laws 2000, LB 900, § 63; Laws 2007, LB296, § 22; Laws 2009, LB389, § 1.
Effective date May 27, 2009.

ARTICLE 51

BUFFER STRIP ACT

Section
2-5106. Buffer Strip Incentive Fund; created; use; investment.

2-5106 Buffer Strip Incentive Fund; created; use; investment.

The Buffer Strip Incentive Fund is created. Proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, proceeds raised from federal grants earmarked for the fund, and any proceeds raised from public or private donations made to the fund shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department to maintain the buffer strip program and for expenses directly related to the program, including necessary expenses of the department in carrying out its duties and responsibilities under the Buffer Strip Act, except that on July 1, 2009, or as soon thereafter as administratively possible, the State Treasurer shall transfer five hundred thousand dollars from the Buffer Strip Incentive Fund to the Noxious Weed and Invasive Plant Species Assistance Fund. The annual cost of administering the buffer strip program shall not exceed ten percent of the total annual proceeds credited to the Buffer Strip Incentive Fund. Such administrative costs shall include funds allocated by the department to the districts for their administrative costs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1998, LB 1126, § 6; Laws 2009, LB98, § 5.
Effective date May 14, 2009.

Cross References

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

ARTICLE 54

AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section
2-5413. Act, how cited.

2-5413 Act, how cited.

Sections 2-5413 to 2-5424 shall be known and may be cited as the Agricultural Opportunities and Value-Added Partnerships Act. The act terminates on January 1, 2015.

Source: Laws 2005, LB 90, § 4; Laws 2009, LB164, § 1.
Operative date August 30, 2009.
Termination date January 1, 2015.

CHAPTER 4
ALIENS

Section
4-108. Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.
4-109. Public benefits, defined.
4-110. Public benefits; verification of lawful presence; exemptions.
4-111. Public benefits; verification of lawful presence; attestation required.
4-112. Public benefits; applicant; eligibility; verification; presumption.
4-113. Public benefits; state agency; annual report.
4-114. Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties.

4-108 Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

(1) Notwithstanding any other provisions of law, unless exempted from verification under section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 4-110 or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) On and after October 1, 2009, no employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act, unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2009, LB403, § 1.
Operative date October 1, 2009.

Cross References

County Employees Retirement Act, see section 23-2331.
Judges Retirement Act, see section 24-701.01.
Nebraska State Patrol Retirement Act, see section 81-2014.01.
School Employees Retirement Act, see section 79-901.
State Employees Retirement Act, see section 84-1331.

4-109 Public benefits, defined.

For purposes of sections 4-108 to 4-113, public benefits means any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of

financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the State of Nebraska.

Source: Laws 2009, LB403, § 2.
Operative date October 1, 2009.

4-110 Public benefits; verification of lawful presence; exemptions.

Verification of lawful presence in the United States pursuant to section 4-108 is not required for:

(1) Any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(2) Assistance for health care services and products, not related to an organ transplant procedure, that are necessary for the treatment of an emergency medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part;

(3) Short-term, noncash, in-kind emergency disaster relief;

(4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease; or

(5) Programs, services, or assistance necessary for the protection of life or safety, such as soup kitchens, crisis counseling and intervention, and short-term shelter, which (a) deliver in-kind services at the community level, including those which deliver such services through public or private, nonprofit agencies and (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the recipient.

Source: Laws 2009, LB403, § 3.
Operative date October 1, 2009.

4-111 Public benefits; verification of lawful presence; attestation required.

Verification of lawful presence in the United States pursuant to section 4-108 requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

(1) He or she is a United States citizen; or

(2) He or she is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of the attestation required under this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

Source: Laws 2009, LB403, § 4.
Operative date October 1, 2009.

4-112 Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (2) of section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5.
Operative date October 1, 2009.

4-113 Public benefits; state agency; annual report.

Each state agency which administers any program of public benefits shall provide an annual report not later than January 31 for the prior year to the Governor and the Clerk of the Legislature with respect to compliance with sections 4-108 to 4-113. The report shall include, but not be limited to, the total number of applicants for benefits and the number of applicants rejected pursuant to such sections.

Source: Laws 2009, LB403, § 6.
Operative date October 1, 2009.

4-114 Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties.

(1) For purposes of this section:

(a) Federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

(b) Public contractor means any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska; and

(c) Public employer means any agency or political subdivision of the State of Nebraska.

(2) Every public employer and public contractor shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Every contract between a public employer and public contractor shall contain a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

(3) For two years after October 1, 2009, the Department of Labor shall make available to all private employers information regarding the federal immigration verification system and encouraging the use of the federal immigration verification system. The department shall report to the Legislature no later than

December 1, 2011, on the use of a federal immigration verification system by Nebraska employers.

(4) This section does not apply to contracts awarded by a public employer prior to October 1, 2009.

Source: Laws 2009, LB403, § 7.
Operative date October 1, 2009.

CHAPTER 8
BANKS AND BANKING

Article.
1. General Provisions. 8-101.01 to 8-1,140.
2. Trust Companies. 8-209, 8-210.
3. Building and Loan Associations. 8-355.
6. Assessments and Fees. 8-602.
7. State-Federal Cooperation Acts; Capital Notes.
   (a) Federal Banking Act of 1933. 8-702.
10. Nebraska Sale of Checks and Funds Transmission Act. 8-1001 to 8-1019.
11. Securities Act of Nebraska. 8-1110 to 8-1123.
26. Credit Report Protection Act. 8-2602 to 8-2609.

ARTICLE 1
GENERAL PROVISIONS

Section
8-101.01. Act, how cited.
8-112. Director of Banking and Finance; records required; list of borrowers; disclosures prohibited; confidential records.
8-113. Unauthorized use of word bank or its derivatives; penalty.
8-133. Rate of interest; inducements prohibited; penalties; pledge of letters of credit authorized; notice required.
8-157.01. Financial institution; electronic terminals; use; user financial institution.
8-162.02. State-chartered bank; fiduciary account controlled by trust department; collateral; public funds exempt.
8-163. Dividends; withdrawal of capital or surplus prohibited; not made; when.
8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-101.01 Act, how cited.

Sections 8-101 to 8-1,140 shall be known and may be cited as the Nebraska Banking Act.

Source: Laws 1998, LB 1321, § 32; Laws 1999, LB 396, § 4; Laws 2009, LB327, § 1.
Operative date August 30, 2009.

8-112 Director of Banking and Finance; records required; list of borrowers; disclosures prohibited; confidential records.

(1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any financial institution owning obligations of such borrowers.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena to the department and upon entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest.

(3) Examination reports, investigation reports, and documents and information relating to such reports remain confidential records of the department, even if such examination reports, investigation reports, and documents and information relating to such reports are transmitted to a financial institution or other entity regulated by the department which is the subject of such reports or documents and information, and may not be otherwise released or disclosed by any such financial institution or other entity regulated by the department.

(4) The restrictions listed in subsections (2) and (3) of this section shall also apply to any representative or agent of the financial institution or other entity regulated by the department.

(5) If examination reports, investigation reports, or documents and information relating to such reports are subpoenaed from the department, the party issuing the subpoena shall give notice of the issuance of such subpoena at least three business days in advance of the entry of a protective order to the financial institution or other entity regulated by the department which is the subject of such reports or documents and information, unless the financial institution or other entity regulated by the department is already a party to the underlying proceeding or unless such notice is otherwise prohibited by law or by court order.

Source: Laws 1923, c. 191, § 35, p. 457; Laws 1929, c. 38, § 18, p. 166; C.S.1929, § 8-119; Laws 1933, c. 18, § 14, p. 142; C.S.Supp.,1941, § 8-119; R.S.1943, § 8-116; Laws 1963, c. 29, § 12, p. 138; Laws 1987, LB 2, § 1; Laws 1996, LB 1053, § 3; Laws 1997, LB 137, § 2; Laws 1999, LB 396, § 6; Laws 2009, LB327, § 3.
Operative date August 30, 2009.

8-113 Unauthorized use of word bank or its derivatives; penalty.

(1) No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity.

(2) This section does not apply to: (a) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (b) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (c) affiliates or subsidiaries of (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association,

or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (d) organizations substantially owned by (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (iv) any combination of entities listed in subdivisions (i) through (iii) of this subdivision; (e) mortgage bankers licensed or registered under the Residential Mortgage Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (f) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (g) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; (h) firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs which issue reward points or credits to persons for their participation therein; and (i) such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof.

(3) Any violation of this section shall be a Class V misdemeanor.

Source: Laws 1921, c. 297, § 1, p. 949; Laws 1921, c. 313, § 1, p. 1000; C.S.1922, § 7985; Laws 1929, c. 37, § 1, p. 155; C.S.1929, § 8-116; Laws 1933, c. 18, § 12, p. 141; C.S.Supp.,1941, § 8-116; R.S.1943, § 8-113; Laws 1963, c. 29, § 13, p. 139; Laws 1977, LB 40, § 38; Laws 1987, LB 2, § 2; Laws 1998, LB 1321, § 2; Laws 2004, LB 999, § 1; Laws 2005, LB 533, § 1; Laws 2007, LB124, § 2; Laws 2009, LB32, § 1; Laws 2009, LB328, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB32, section 1, with LB328, section 1, to reflect all amendments.

Note: Changes made by LB32 became effective March 6, 2009. Changes made by LB328 became effective April 23, 2009.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

8-133 Rate of interest; inducements prohibited; penalties; pledge of letters of credit authorized; notice required.

(1) A state-chartered bank may pay interest at any rate on any deposits made or retained in the bank.

(2) Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony.

Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the bank shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345. A bank may also secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(4) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond or an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation. Any bank which offers letters of credit for consideration to depositors pursuant to this section shall post a notice in the lobby of each office of such bank stating that letters of credit issued by the Federal Home Loan Bank of Topeka which provide coverage for deposits in excess of the amounts insured by the Federal Deposit Insurance Corporation may be available to depositors of the bank. Provision of a letter of credit issued by the Federal Home Loan Bank of Topeka by a bank to a depositor shall be at the discretion of the bank. The notice required under this section shall be sufficient if made in substantially the following form:

Notice

This bank is a member of the Federal Home Loan Bank of Topeka and offers for consideration Federal Home Loan Bank of Topeka letters of credit which provide coverage for deposits in excess of the amounts insured by the Federal Deposit Insurance Corporation. Please contact a representative of the bank to determine if such a letter of credit is available to you.

Source: Laws 1909, c. 10, § 27, p. 79; Laws 1911, c. 8, § 27, p. 81; R.S.1913, § 306; Laws 1919, c. 190, tit. V, art. XVI, § 27, p. 696; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 8008; Laws 1925, c. 28, § 1, p. 119; C.S.1929, § 8-140; Laws 1930, Spec. Sess., c. 6, § 8, p. 30; Laws 1933, c. 18, § 26, p. 148; C.S.Supp.,1941, § 8-140; R.S.1943, § 8-142; Laws 1959, c. 15, § 12, p. 136; R.R.S.1943, § 8-142; Laws 1963, c. 29, § 33, p. 147; Laws 1977, LB 40, § 43; Laws 1978, LB 966, § 1; Laws 1980, LB 966, § 1; Laws 1990, LB 956, § 1; Laws 1994, LB 979, § 1; Laws 1996, LB 1053, § 4; Laws 2003, LB 217, § 5; Laws 2009, LB74, § 1. Effective date March 6, 2009.

8-157.01 Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from check-

ing accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller

machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4)(a) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2004. Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or

other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such

specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(l) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

(19) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account

from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4.

Note: Changes made by LB75 became effective February 27, 2009. Changes made by LB327 became operative April 9, 2009.

8-162.02 State-chartered bank; fiduciary account controlled by trust department; collateral; public funds exempt.

(1) A state-chartered bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department unless prohibited by applicable law.

(2) To the extent that the funds are not insured or guaranteed by the Federal Deposit Insurance Corporation, a state-chartered bank shall set aside collateral as security under the control of appropriate fiduciary officers and bank employees. The bank shall place pledged assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees of the bank designated for that purpose by the board of directors. The bank may maintain the investments of a fiduciary account off-premises if consistent with applicable law and if the bank maintains adequate safeguards and controls. The market value of the collateral shall at all times equal or exceed the amount of the uninsured or unguaranteed fiduciary funds.

(3) A state-chartered bank may satisfy the collateral requirements of this section with any of the following: (a) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; (b) readily marketable securities of the classes in which banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law; and (c) surety bonds, to the extent the surety bonds provide adequate security, unless prohibited by applicable law.

(4) A state-chartered bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution unless prohibited by applicable law. The bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, as it would if the deposit was made at the bank, unless such action is prohibited by applicable law.

(5) Public funds deposited in and held by a state-chartered bank are not subject to this section.

Source: Laws 2009, LB327, § 2.
Operative date August 30, 2009.

8-163 Dividends; withdrawal of capital or surplus prohibited; not made; when.

No bank shall withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital or surplus without the written permission of the director. If losses have at any time been sustained equal to or exceeding the undivided profits on hand, no dividends shall be made without

the written permission of the director. No dividend shall be made by any bank in an amount greater than the net profits on hand without the written permission of the director. As used in this section, net profits on hand means the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses, and bad debts, accrued dividends on preferred stock, if any, and federal and state taxes, for the present and two immediately preceding calendar years.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-156; Laws 1963, c. 29, § 63, p. 160; Laws 1988, LB 996, § 3; Laws 2009, LB327, § 5.
Operative date April 9, 2009.

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 April 9, 2009, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6.
Operative date April 9, 2009.

ARTICLE 2
TRUST COMPANIES

Section
8-209. Pledge of securities with Department of Banking and Finance; amount required.
8-210. Securities; kinds authorized; pledge with Department of Banking and Finance.

8-209 Pledge of securities with Department of Banking and Finance; amount required.

(1) Any corporation organized to do business as a trust company under the Nebraska Trust Company Act shall make a pledge with the Department of Banking and Finance of approved securities.

(2) The amount of securities required to be pledged shall be based on the market value of trust assets held by the trust company as follows:

(a) Trust companies with trust assets with a market value of less than twenty-five million dollars shall pledge securities in the amount of one hundred thousand dollars in par value;

(b) Trust companies with trust assets with a market value of at least twenty-five million dollars but less than two hundred fifty million dollars shall pledge securities in the amount of two hundred thousand dollars in par value;

(c) Trust companies with trust assets with a market value of at least two hundred fifty million dollars but less than two billion five hundred million dollars shall pledge securities in the amount of three hundred thousand dollars in par value;

(d) Trust companies with trust assets with a market value of at least two billion five hundred million dollars but less than five billion dollars shall pledge securities in the amount of four hundred thousand dollars in par value; and

(e) Trust companies with trust assets with a market value of five billion dollars or more shall pledge securities in the amount of five hundred thousand dollars in par value.

(3) A trust company shall determine the market value of its trust assets at the end of each calendar year. If such valuation shows that the pledge of securities is less than is required by subsection (2) of this section, the trust company shall increase the amount of the securities pledged with the department within sixty days following the end of the calendar year.

(4) If at any time the market value of pledged assets is determined to have depreciated to less than ninety percent of par value or the trust company has trust funds deposited with itself or its supporting commercial bank in excess of those deposits referred to by section 8-212, the Director of Banking and Finance may require additional pledges in amounts deemed necessary to fully secure pledging requirements or excessive trust fund depository balances.

(5) Any national bank authorized by the Office of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System to act in a fiduciary capacity in this state, any federal savings association authorized by the Director of the Office of Thrift Supervision to act in a fiduciary capacity in this state, any federally chartered trust company, and any out-of-state trust company authorized under the Interstate Trust Company Office Act shall make similar pledges with the department, and all such deposits of national banks held by the department shall be considered as having been lawfully so pledged and subject to the Nebraska Trust Company Act.

Source: Laws 1911, c. 31, § 9, p. 192; R.S.1913, § 746; Laws 1919, c. 190, tit. V, art. XVIII, § 9, p. 721; C.S.1922, § 8071; C.S.1929, § 8-209; Laws 1933, c. 18, § 75, p. 174; Laws 1939, c. 3, § 1, p. 59; C.S.Supp.,1941, § 8-209; R.S.1943, § 8-209; Laws 1993, LB 81, § 23; Laws 1998, LB 1321, § 39; Laws 2009, LB327, § 7. Operative date August 30, 2009.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-210 Securities; kinds authorized; pledge with Department of Banking and Finance.

Securities pledged pursuant to section 8-209 shall consist of any securities which constitute a legal investment for the trust company except for bills of exchange, notes, mortgages, banker's acceptances, or certificates of deposit. State, county, municipal, and corporate bond issues must be of investment quality and be rated in the three top categories of investment by at least one

nationally recognized rating service, except that all issues of counties and municipalities of Nebraska shall be acceptable.

Such securities shall not be accepted for purpose of pledge at a rate above par value and if their market value is less than par value they shall not be accepted for such purpose above their actual market value. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be at the expense of the trust company.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 10, p. 721; C.S.1922, § 8072; C.S.1929, § 8-210; Laws 1933, c. 18, § 76, p. 175; C.S.Supp.,1941, § 8-210; R.S.1943, § 8-210; Laws 1957, c. 13, § 1, p. 136; Laws 1959, c. 263, § 2, p. 922; Laws 1967, c. 23, § 1, p. 127; Laws 1993, LB 81, § 24; Laws 2009, LB327, § 8.
Operative date August 30, 2009.

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.

8-355 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 April 9, 2009, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9.
Operative date April 9, 2009.

ARTICLE 6
ASSESSMENTS AND FEES

Section
8-602. Department of Banking and Finance; services; schedule of fees.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(7) For issuing a certificate of approval to a credit union, ten dollars;

(8) For investigating the applications required by sections 8-120 and 8-331 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-120 and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(10) For the handling of pledged securities as provided in sections 8-210 and 8-1006, at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank pledging the securities;

(11) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(12) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(13) For investigating an application for approval to establish or acquire a branch or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(15) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(16) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars; and

(20) For investigating an applicant under section 8-1513, five thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10.
Operative date August 30, 2009.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section
8-702. Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(a) FEDERAL BANKING ACT OF 1933

8-702 Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2)(a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (ii) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in this subsection shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in this subsection in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with this subsection with the Department of Banking and Finance.

(b) Effective July 31, 2010, any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identity to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2.
Effective date April 23, 2009.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section
8-1001. Terms, defined.
8-1001.01. Act, how cited.
8-1018. Acquisition of control of licensee; notice to director; disapproval; conditions; notice; hearing; order.
8-1019. Licensee; material change in application; notice; report; when required.

8-1001 Terms, defined.

For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but does not include the United States Government or the government of the State of Nebraska;

(2) Licensee means any person duly licensed pursuant to the act;

(3) Check means any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money;

(4) Personal money order means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person;

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

(6) Financial institution has the same meaning as in section 8-101;

(7) Transmission means a transfer by oral, written, or electronic means or instruction; and

(8) Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (a) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 1965, c. 26, § 1, p. 192; Laws 1993, LB 121, § 94; Laws 2001, LB 53, § 8; Laws 2003, LB 217, § 18; Laws 2004, LB 999, § 7; Laws 2009, LB327, § 11.
Operative date August 30, 2009.

8-1001.01 Act, how cited.

Sections 8-1001 to 8-1019 shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Source: Laws 1965, c. 26, § 16, p. 198; Laws 2001, LB 53, § 18; R.S.Supp.,2002, § 8-1015; Laws 2003, LB 217, § 19; Laws 2006, LB 876, § 14; Laws 2009, LB327, § 12.
Operative date August 30, 2009.

8-1018 Acquisition of control of licensee; notice to director; disapproval; conditions; notice; hearing; order.

(1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Sale of Checks and Funds Transmission Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon it within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director. The director may require that any acquiring person comply with the application requirements of section 8-1005.

(b) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations of the Department of Banking and Finance. Following such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2009, LB327, § 13.
Operative date August 30, 2009.

8-1019 Licensee; material change in application; notice; report; when required.

(1) A licensee shall file notice with the director within thirty calendar days of any material changes in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony; or

(f) A charge or conviction of an authorized agent for a felony.

Source: Laws 2009, LB327, § 14.
Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 11
SECURITIES ACT OF NEBRASKA

Section
8-1110. Securities exempt from registration.
8-1115.01. Investigation or other proceeding; prohibited acts.
8-1116. Violations; injunction; receiver; appointment; additional court orders authorized.
8-1123. Act, how cited.

8-1110 Securities exempt from registration.

Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: (a) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (b) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (c) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ Global Market.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5)(a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state, except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (5)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(6) Any security which meets all of the following conditions:

(a) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two

hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Source: Laws 1965, c. 549, § 10, p. 1785; Laws 1973, LB 167, § 5; Laws 1980, LB 912, § 1; Laws 1989, LB 391, § 1; Laws 1992, LB 758, § 1; Laws 1993, LB 216, § 6; Laws 1994, LB 942, § 1; Laws 1996, LB 1053, § 8; Laws 1997, LB 335, § 6; Laws 2001, LB 53, § 23; Laws 2003, LB 131, § 9; Laws 2009, LB113, § 1.
Effective date May 27, 2009.

8-1115.01 Investigation or other proceeding; prohibited acts.

It shall be unlawful for any person with respect to any investigation or other proceeding under the Securities Act of Nebraska to: (1) Alter, destroy, mutilate, or conceal; (2) make a false entry in or by any means falsify; or (3) remove from any place or withhold from investigators or officials any record, document, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the investigation or administration of any other proceeding under the act.

Source: Laws 2009, LB113, § 2.
Effective date May 27, 2009.

8-1116 Violations; injunction; receiver; appointment; additional court orders authorized.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule or order under the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska, any rule and

regulation adopted and promulgated under the act, or any order of the director issued thereunder. The director may not be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3.
Effective date May 27, 2009.

8-1123 Act, how cited.

Sections 8-1101 to 8-1123 shall be known and may be cited as the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 23, p. 1797; Laws 1997, LB 335, § 11; Laws 1998, LB 1180, § 2; Laws 2002, LB 957, § 11; Laws 2009, LB113, § 4.
Effective date May 27, 2009.

ARTICLE 26

CREDIT REPORT PROTECTION ACT

Section
8-2602. Terms, defined.
8-2607. Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.
8-2609. Consumer reporting agency; fee authorized; exceptions.

8-2602 Terms, defined.

For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) File, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored;

(3) Minor means a person who is under nineteen years of age;

(4) Security freeze means a notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer; and

(5) Victim of identity theft means a consumer who has a copy of an official police report evidencing that the consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2; Laws 2009, LB177, § 1.
Effective date August 30, 2009.

8-2607 Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.

(1) A security freeze shall remain in place, subject to being put on hold or temporarily lifted as otherwise provided in this section, until the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608.

(2) A consumer reporting agency may place a hold on a file due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to release a hold on a file, the consumer reporting agency shall notify the consumer in writing three business days prior to releasing the hold on the file.

(3) A consumer reporting agency shall temporarily lift a security freeze only upon request by the consumer under section 8-2606.

(4) A consumer reporting agency shall remove a security freeze upon the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608.

Source: Laws 2007, LB674, § 7; Laws 2009, LB177, § 2.
Effective date August 30, 2009.

8-2609 Consumer reporting agency; fee authorized; exceptions.

(1) A consumer reporting agency may charge a fee of three dollars for placing, temporarily lifting, or removing a security freeze unless:

(a) The consumer is a minor; or

(b)(i) The consumer is a victim of identity theft; and

(ii) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Source: Laws 2007, LB674, § 9; Laws 2009, LB177, § 3.
Effective date August 30, 2009.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
2. Bingo. 9-255.04.
3. Pickle Cards. 9-347, 9-347.01.
8. State Lottery. 9-812.

ARTICLE 2
BINGO

Section
9-255.04. Expenses; limitations; allocation; payment of workers; expenses; how paid.

9-255.04 Expenses; limitations; allocation; payment of workers; expenses; how paid.

(1) No expense shall be incurred or amounts paid in connection with the conduct of bingo by a licensed organization except those which are reasonable and necessary.

(2) A licensed organization shall not spend more than fourteen percent of its bingo gross receipts to pay the expenses of conducting bingo. The actual cost of (a) license and local permit fees, (b) any taxes authorized by the Nebraska Bingo Act, (c) bingo and promotional prizes, (d) the purchase, rental, or lease of bingo equipment, and (e) the rental or lease of a premises for the conduct of bingo and the purchase, rental, or lease of personal property as allowed by the department in rule and regulation which is necessary for the conduct of bingo shall not be included in determining compliance with the expense limitation contained in this section.

(3) A licensed organization which is also licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation.

(4) The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of

personal property or of a premises for the conduct of bingo. No portion of the twelve percent of the definite profit of a pickle card unit as allowed by section 9-347 to pay the allowable expenses of operating a lottery by the sale of pickle cards shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion.

(5) All persons paid for working at a bingo occasion, including pickle card sellers but excluding concession workers, shall be paid only by a check written from the licensed organization's bingo checking account and shall not receive any other compensation or payment for working at a bingo occasion from any other source. Such wages shall be at an hourly or occasion rate and shall be included in the amount allowed by the expense limitation provided in subsection (2) of this section. No person shall receive any compensation or payment from a licensed organization based upon a percentage of the organization's bingo gross receipts or profit.

(6) No expenses associated with the conduct of bingo may be paid directly from the licensed organization's pickle card checking account. A licensed organization may transfer funds from its pickle card checking account to its bingo checking account as permitted by subsection (3) of this section by a check drawn on the pickle card checking account or by electronic funds transfer as provided only by section 9-347.

Source: Laws 1994, LB 694, § 52; Laws 1995, LB 344, § 8; Laws 2002, LB 545, § 17; Laws 2009, LB286, § 1.
Operative date August 30, 2009.

Cross References

Nebraska Pickle Card Lottery Act, see section 9-301.

ARTICLE 3
PICKLE CARDS

Section
9-347. Gross proceeds; definite profit; use; restrictions; allocation of expenses.
9-347.01. Definite profit; distribution; net profit; use.

9-347 Gross proceeds; definite profit; use; restrictions; allocation of expenses.

(1) The gross proceeds of any lottery by the sale of pickle cards shall be used solely for lawful purposes, awarding of prizes, payment of the unit cost, any commission paid to a pickle card operator, allowable expenses, and allocations for bingo expenses as provided by subsection (5) of this section.

(2) Not less than sixty-five percent or more than eighty percent of the gross proceeds of any lottery by the sale of pickle cards shall be used for the awarding of prizes.

(3) Not more than twelve percent of the definite profit of a pickle card unit shall be used by the licensed organization to pay the allowable expenses of operating a lottery by the sale of pickle cards, except that license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent and pickle card dispensing device registration fees shall not be included in determining the twelve-percent limitation on expenses and no portion of such twelve percent shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion conducted pursuant to the

Nebraska Bingo Act, and of such twelve percent not more than six percent of the definite profit may be used by the licensed organization for the payment of any commission, salary, or fee to a sales agent in connection with the marketing, sale, and delivery of a pickle card unit. When determining the twelve percent of definite profit that is permitted to pay the allowable expenses of operating a lottery by the sale of pickle cards, the definite profit from the sale of pickle cards at the organization's bingo occasions shall not be included.

(4) Not more than thirty percent of the definite profit of a pickle card unit shall be used by a licensed organization to pay a pickle card operator a commission, fee, or salary for selling individual pickle cards as opportunities for participation in a lottery by the sale of pickle cards on behalf of the licensed organization.

(5) An organization licensed to conduct bingo pursuant to the Nebraska Bingo Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation. The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of personal property or of a premises for the conduct of bingo. No expenses associated with the conduct of bingo may be paid directly from the pickle card checking account. A licensed organization which needs to allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions to pay bingo expenses as provided by this section shall transfer funds from the pickle card checking account to the bingo checking account by a check drawn on the pickle card checking account or by electronic funds transfer.

Source: Laws 1986, LB 1027, § 113; Laws 1988, LB 1232, § 45; Laws 1989, LB 767, § 43; Laws 1994, LB 694, § 89; Laws 1995, LB 344, § 18; Laws 2002, LB 545, § 34; Laws 2009, LB286, § 2. Operative date August 30, 2009.

Cross References

Nebraska Bingo Act, see section 9-201.

9-347.01 Definite profit; distribution; net profit; use.

(1) For each type of pickle card unit marketed in this state, the department shall determine the following: (a) When a licensed organization sells pickle cards through pickle card operators, the portion of the definite profit from that pickle card unit which shall go to the licensed organization, such amount to be not less than seventy percent of the definite profit from such pickle card unit;

(b) the maximum amount of the definite profit from the sale of a pickle card unit that a licensed organization may pay a pickle card operator as a commission, fee, or salary to sell its pickle cards, such amount not to exceed thirty percent of the definite profit from such pickle card unit; (c) the portion of the definite profit from the sale of a pickle card unit which may be expended by a licensed organization for allowable expenses, such amount not to exceed twelve percent of the definite profit from such pickle card unit; and (d) the portion of the definite profit from the sale of a pickle card unit which may be utilized by a licensed organization for payment of the organization's sales agent, such amount to be a portion of the allowable expenses and not to exceed six percent of the definite profit from such pickle card unit.

(2) The licensed organization's net profit from the sale of a pickle card unit shall be used exclusively for a lawful purpose. A licensed organization shall not donate or promise to donate its net profit or any portion of the net profit to a recipient outside of its organization as an inducement for or in exchange for (a) a payment, gift, or other thing of value from the recipient to any person, organization, or corporation, including, but not limited to, the licensed organization or any of its members, employees, or agents, or (b) a pickle card operator's agreement to sell pickle cards on behalf of the licensed organization.

Source: Laws 1988, LB 1232, § 46; Laws 1989, LB 767, § 44; Laws 1995, LB 344, § 19; Laws 2002, LB 545, § 35; Laws 2009, LB286, § 3. Operative date August 30, 2009.

ARTICLE 8

STATE LOTTERY

Section

9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) Beginning October 1, 2003, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund.

The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Scholarship Fund;

(d) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(e) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(f) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 71-817.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2005-06, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the School District Reorganization Fund, and the remaining amount shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted.

(c) For fiscal year 2006-07, the Education Innovation Fund shall be allocated as follows: The first two hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, the next one million dollars shall be transferred to the School District Reorganization Fund, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(d) For fiscal year 2007-08, the Education Innovation Fund shall be allocated as follows: The first five hundred thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(e) For fiscal year 2008-09, the Education Innovation Fund shall be allocated as follows: The first seven hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(f) For fiscal year 2009-10, the Education Innovation Fund shall be allocated as follows: Any amounts transferred to the Education Innovation Fund from the School District Reorganization Fund shall be returned to the School District Reorganization Fund first, the next one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(g) For fiscal years 2010-11 through 2015-16, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(h) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 563, § 24; Laws 1993, LB 138, § 28; Laws 1994, LB 647, § 5;

Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB286, section 4, with LB545, section 1, and LB547, section 1, to reflect all amendments.

Note: Changes made by LB545 became effective May 20, 2009. Changes made by LB286 became operative June 30, 2009. Changes made by LB547 became operative July 1, 2009.

Cross References

Excellence in Teaching Act, see section 79-8,132.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 10
BONDS

Article.
12. Nebraska Governmental Unit Credit Facility Act. 10-1201 to 10-1206.

ARTICLE 12
NEBRASKA GOVERNMENTAL UNIT CREDIT FACILITY ACT

Section
10-1201. Act, how cited.
10-1202. Legislative findings.
10-1203. Terms, defined.
10-1204. Credit facility; authorized; approval; terms and conditions.
10-1205. Credit facility or related agreement; payments authorized.
10-1206. Act; construction with other law or home rule charters.

10-1201 Act, how cited.

Sections 10-1201 to 10-1206 shall be known and may be cited as the Nebraska Governmental Unit Credit Facility Act.

Source: Laws 2009, LB377, § 1.
Effective date April 9, 2009.

10-1202 Legislative findings.

The Legislature hereby finds and declares that there currently exist and may hereafter exist conditions which make it difficult for governmental units to issue and sell their bonds or other evidences of indebtedness and to obtain credit at reasonable interest rates and that the United States Government has authorized certain of its agencies and instrumentalities to provide credit support for state and local governmental units under more favorable terms.

Source: Laws 2009, LB377, § 2.
Effective date April 9, 2009.

10-1203 Terms, defined.

For purposes of the Nebraska Governmental Unit Credit Facility Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds by a governmental unit;

(2) Bank means any federally chartered or state-chartered bank, savings and loan association, building and loan association, insurance company, or any other public or private agency which insures or guarantees the indebtedness of other persons or governmental units;

(3) Bond means any bond, note, interim certificate, evidence of bond ownership, bond anticipation note, warrant, or other evidence of indebtedness issued under any authorizing statute;

(4) Credit facility means any agreement or other instrument providing for a guarantee or other contractual arrangement providing direct or indirect assur-

ance for payment of principal or interest or both principal and interest on any bond issued by a governmental unit, including, but not limited to, any letter of credit, contract of guarantee, contract of insurance, standby purchase contract, or any other contract for purchase or other agreement as to assurance of payment;

(5) Governmental unit means any county, school district, city, village, public power district, public power and irrigation district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital district, hospital authority, housing authority, joint entity created under the Interlocal Cooperation Act, joint public agency created under the Joint Public Agency Act, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska;

(6) Measure means any ordinance, resolution, or other enactment by a governmental unit, or any amendment or supplement to any such ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute;

(7) Terms and conditions means the terms and conditions of a credit facility, which may include, but are not limited to, (a) representations and warranties; (b) payment of fees and expenses; (c) reimbursement of amounts advanced and payment of interest on amounts advanced; (d) holding harmless for additional taxes or increased costs payable by the credit facility provider; (e) remarketing or resale of purchased bonds; (f) indemnification for liabilities incurred by a credit facility provider; (g) affirmative and negative covenants relating to bonds for which assurance is provided; (h) provisions relating to defaults and remedies upon default; and (i) such other provisions as may be determined by the governing body of a governmental unit to be either customary or appropriate in obtaining a credit facility; and

(8) United States governmental enterprise means any agency or instrumentality of the United States Government. For all purposes of the Nebraska Governmental Unit Credit Facility Act, the term United States governmental enterprise shall be conclusively construed as including, but not limited to, any of the Federal Home Loan Banks, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Source: Laws 2009, LB377, § 3.
Effective date April 9, 2009.

Cross References

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

10-1204 Credit facility; authorized; approval; terms and conditions.

Any governmental unit in the State of Nebraska may obtain credit support for its bonds by entering into or obtaining a credit facility for any of its bonds from any United States governmental enterprise or from any bank providing a credit facility which is confirmed or otherwise supported by a credit facility provided by a United States governmental enterprise. Any credit facility shall be approved by a measure adopted before or after issuance of any bonds. Each credit

facility shall have such terms and conditions as shall be approved by a measure adopted by the governmental unit before or after the issuance of bonds.

Source: Laws 2009, LB377, § 4.
Effective date April 9, 2009.

10-1205 Credit facility or related agreement; payments authorized.

Any credit facility or related agreement may provide for payment of amounts owing by the governmental unit from any resources of the governmental unit as may be deemed appropriate by the governing body, including taxes and other revenue. Any amounts required to reimburse the provider of a credit facility for amounts advanced for payment of principal and interest or for purchase of a bond or for related fees and expenses shall have the same status under sections 13-520 and 77-3442 as the indebtedness for which the credit facility has been provided. Such indebtedness includes, without limitation, the payments of principal and interest for which the advance or purchase was made or the fees and expenses incurred.

Source: Laws 2009, LB377, § 5.
Effective date April 9, 2009.

10-1206 Act; construction with other law or home rule charters.

The Nebraska Governmental Unit Credit Facility Act shall be independent of and in addition to any other provision of law of the State of Nebraska or provisions of home rule charters, and any credit facility may be obtained under the act for any purpose authorized in the act even though other laws of the State of Nebraska or provisions of home rule charters may provide for the obtaining of a credit facility for the same or similar purposes. The act shall not be considered amendatory of or limited by any other law of the State of Nebraska or provisions of home rule charters, and any credit facility may be obtained under the act without complying with the restrictions or requirements of any other law of the State of Nebraska, except when specifically required by the act, or without complying with the restrictions or requirements of home rule charters. Nothing in the act shall prohibit or limit the obtaining of any credit facility in accordance with other applicable laws of the State of Nebraska or of home rule charters, if the governing body of a governmental unit determines to obtain such credit facility under such other laws or charter or otherwise limit the provisions of any home rule charter.

Source: Laws 2009, LB377, § 6.
Effective date April 9, 2009.

CHAPTER 11
BONDS AND OATHS, OFFICIAL

Article.
1. Official Bonds and Oaths. 11-119.

ARTICLE 1
OFFICIAL BONDS AND OATHS

Section
11-119. Bonds; officers; penal sums.

11-119 Bonds; officers; penal sums.

The following named officers shall execute a bond with penalties of the following amounts:

(1) The Governor, one hundred thousand dollars;

(2) The Lieutenant Governor, one hundred thousand dollars;

(3) The Auditor of Public Accounts, one hundred thousand dollars;

(4) The Secretary of State, one hundred thousand dollars;

(5) The Attorney General, one hundred thousand dollars;

(6) The State Treasurer, not less than one million dollars and not more than double the amount of money that may come into his or her hands, to be fixed by the Governor;

(7) Each county attorney, a sum not less than one thousand dollars to be fixed by the county board;

(8) Each clerk of the district court, not less than five thousand dollars or more than one hundred thousand dollars to be determined by the county board;

(9) Each county clerk, not less than one thousand dollars or more than one hundred thousand dollars to be determined by the county board, except that when a county clerk also has the duties of other county offices the minimum bond shall be two thousand dollars;

(10) Each county treasurer, not less than ten thousand dollars and not more than the amount of money that may come into his or her hands, to be determined by the county board;

(11) Each sheriff, in counties of not more than twenty thousand inhabitants, five thousand dollars, and in counties over twenty thousand inhabitants, ten thousand dollars;

(12) Each district superintendent of public instruction, one thousand dollars;

(13) Each county surveyor, five hundred dollars;

(14) Each county commissioner or supervisor, in counties of not more than twenty thousand inhabitants, one thousand dollars, in counties over twenty thousand and not more than thirty thousand inhabitants, two thousand dollars, in counties over thirty thousand and not more than fifty thousand inhabitants,

three thousand dollars, and in counties over fifty thousand inhabitants, five thousand dollars;

(15) Each register of deeds in counties having a population of more than sixteen thousand five hundred inhabitants, not less than two thousand dollars or more than one hundred thousand dollars to be determined by the county board;

(16) Each township clerk, two hundred fifty dollars;

(17) Each township treasurer, two thousand dollars;

(18) Each county assessor, not more than five thousand dollars and not less than two thousand dollars;

(19) Each school district treasurer, not less than five hundred dollars or more than double the amount of money that may come into his or her hands, the amount to be fixed by the president and secretary of the district;

(20) Each road overseer, two hundred fifty dollars;

(21) Each member of a county weed district board and the manager thereof, such amount as may be determined by the county board of commissioners or supervisors of each county with the same amount to apply to each member of any particular board;

(22) In any county, in lieu of the individual bonds required to be furnished by county officers, a schedule, position, or blanket bond or undertaking may be given by county officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The county may pay the premium for the bond. The bond shall be, at a minimum, an aggregate of the amounts fixed by law or by the person or board authorized by law to fix the amounts, and with such terms and conditions as may be required by sections 11-101 to 11-130; and

(23) Each learning community coordinating council treasurer, not less than five hundred dollars or more than double the amount of money that may come into his or her hands, the amount to be fixed by the learning community coordinating council.

All other state officers, department heads, and employees shall be bonded or insured as required by section 11-201.

Source: Laws 1881, c. 13, § 19, p. 98; Laws 1901, c. 11, § 1, p. 63; Laws 1905, c. 12, § 1, p. 66; R.S.1913, § 5725; Laws 1917, c. 110, § 1, p. 282; C.S.1922, § 5055; Laws 1927, c. 156, § 1, p. 417; C.S. 1929, § 12-119; Laws 1933, c. 115, § 1, p. 460; Laws 1935, c. 22, § 1, p. 105; C.S.Supp.,1941, § 12-119; R.S.1943, § 11-119; Laws 1947, c. 16, § 4, p. 97; Laws 1951, c. 14, § 1, p. 89; Laws 1963, c. 38, § 1, p. 206; Laws 1965, c. 538, § 31, p. 1716; Laws 1967, c. 36, § 1, p. 160; Laws 1969, c. 52, § 1, p. 350; Laws 1971, LB 298, § 1; Laws 1972, LB 1032, § 93; Laws 1973, LB 226, § 1; Laws 1974, LB 7, § 1; Laws 1975, LB 103, § 1; Laws 1978, LB 653, § 6; Laws 1983, LB 369, § 1; Laws 1988, LB 1030, § 1; Laws 1995, LB 179, § 1; Laws 1999, LB 272, § 1; Laws 2004, LB 884, § 8; Laws 2009, LB392, § 1.
Effective date May 27, 2009.

CHAPTER 12
CEMETERIES

Article.
1. Wyuka Cemetery. 12-101, 12-101.01.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-402.
11. Burial Pre-Need Sales. 12-1102 to 12-1116.
13. State Veteran Cemetery System. 12-1301.

ARTICLE 1
WYUKA CEMETERY

Section
12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.
12-101.01. Trustee; potential conflict of interest; actions required.

12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and management of the affairs of such cemetery shall be vested in a board of three trustees until July 1, 2009, and thereafter shall be vested in a board of five trustees. The trustees shall serve without compensation and shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, and to acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and shall have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The two trustees appointed for their initial terms of office beginning July 1, 2009, shall be appointed by the Governor to serve a five-year term and a six-year term, respectively. Thereafter, each of the five trustees shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Secretary of State, on or before the second Tuesday in March of each year, an itemized

report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6)(a) Beginning December 31, 1998, and each December 31 thereafter, the trustees shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the trustees may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the trustees shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p.

179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2; Laws 2009, LB498, § 1.
Effective date May 27, 2009.

12-101.01 Trustee; potential conflict of interest; actions required.

Any trustee of Wyuka Cemetery who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(1) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;

(2) Deliver a copy of the statement to the person in charge of keeping records for the board of trustees of Wyuka Cemetery who shall enter the statement onto the public records of the board of trustees; and

(3) Abstain from participating or voting on the matter in which the trustee has a conflict of interest.

Source: Laws 2009, LB498, § 2.
Effective date May 27, 2009.

ARTICLE 4

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

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

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

(1) The mayor and council or the board of trustees, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of such cemeteries and the inhabitants thereof, may each year levy a tax not exceeding five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. The tax shall be collected and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery and the inhabitants thereof. Warrants upon this fund shall be drawn by the cemetery board and shall be paid by the city or village treasurer. The city council or the board of trustees may issue a warrant from the cemetery fund if a payment is due and the cemetery board is not scheduled to meet prior to such due date to authorize the warrant.

(2) The mayor and council or the board of trustees may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund may be used for the general care, management,

maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(3) The mayor and council or the board of trustees may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

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

Source: Laws 1917, c. 207, § 2, p. 496; C.S.1922, § 4493; C.S.1929, § 13-402; R.S.1943, § 12-402; Laws 1953, c. 17, § 1, p. 84; Laws 1979, LB 187, § 26; Laws 1992, LB 719A, § 24; Laws 2005, LB 262, § 1; Laws 2008, LB995, § 2; Laws 2009, LB500, § 1. Effective date August 30, 2009.

ARTICLE 11

BURIAL PRE-NEED SALES

Section
12-1102. Terms, defined.
12-1107. Trustees; acceptance of funds; conditions; powers.
12-1116. Licenses; disciplinary actions; grounds; notice; administrative fine.

12-1102 Terms, defined.

For purposes of the Burial Pre-Need Sale Act, unless the context otherwise requires:

(1) Agent shall mean any person who acts for or on behalf of a pre-need seller in making pre-need sales;

(2) Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner

in connection with a funeral or the interment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(3) Columbarium shall mean an aboveground structure or building which is used or intended to be used for the inurnment of human remains in a niche. A columbarium may be combined with a mausoleum;

(4) Crypt or niche shall mean a chamber in a lawn crypt, columbarium, or mausoleum of sufficient size to inter or entomb cremated or noncremated human remains;

(5) Delivery shall mean the act of performing the service required by or the act of placing the item purchased in the physical possession of the pre-need purchaser, including, but not limited to, the installing or depositing of the item sold on or in real property owned by or designated by the person entitled to receive such item, except that (a) the pre-need burial of a vault shall constitute delivery only if the burial is with the consent of the pre-need purchaser and the pre-need seller has made other pre-need vault burials prior to January 1, 1986, and (b) delivery of a crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker or monument may be accomplished by delivery of a document of title;

(6) Department shall mean the Department of Insurance;

(7) Director shall mean the Director of Insurance;

(8) Document of title shall mean a deed, bill of sale, warehouse receipt, or any other document which meets the following requirements:

(a) The effect of the document is to immediately vest the ownership of the item described in the person purchasing the item;

(b) The document states the exact location of such item; and

(c) The document gives assurances that the item described exists in substantially completed form and is subject to delivery upon request;

(9) Human remains shall mean the body of a deceased person;

(10) Lawn crypt shall mean an inground burial receptacle of single or multiple depth, installed in multiples of ten or more in a large mass excavation, usually constructed of concrete and installed on gravel or other drainage underlayment and which acts as an outer container for the interment of human remains;

(11) Letter of credit shall mean an irrevocable undertaking issued by any financial institution which qualifies as a trustee under the Burial Pre-Need Sale Act, given to a pre-need seller and naming the director as the beneficiary, in which the issuer agrees to honor drafts or other demands for payment by the beneficiary up to a specified amount;

(12) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;

(13) Marker, monument, or lettering shall mean an object or method used to memorialize, locate, and identify human remains;

(14) Master trust agreement shall mean an agreement between a pre-need seller and a trustee, a copy of which has been filed with the department, under which proceeds from pre-need sales may be deposited by the pre-need seller;

(15) Mausoleum shall mean an aboveground structure or building which is used or intended to be used for the entombment of human remains in a crypt. A mausoleum may be combined with a columbarium;

(16) Pre-need purchaser shall mean a member of the general public purchasing burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller for personal use;

(17) Pre-need sale shall mean any sale by any pre-need seller to a pre-need purchaser of:

(a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral or burial of human remains;

(b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or

(c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale;

(18) Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public;

(19) Substantially completed shall mean that time when the mausoleum, columbarium, or lawn crypt being constructed is then ready for the interment, entombment, or inurnment of human remains;

(20) Surety bond shall mean an undertaking given by an incorporated surety company naming the director as the beneficiary and conditioned upon the faithful performance of a contract for the construction of a mausoleum, columbarium, or lawn crypt by a pre-need seller;

(21) Trust account shall mean either a separate trust account established pursuant to the Burial Pre-Need Sale Act for a specific pre-need purchaser by a pre-need seller or multiple accounts held under a master trust agreement when it is required by the act that all or some portion of the proceeds of such pre-need sale be placed in trust by the pre-need seller;

(22) Trustee shall mean a bank, trust company, building and loan association, or credit union within the state whose deposits or accounts are insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(23) Trust principal shall mean all deposits, including amounts retained as required by section 12-1114, made to a trust account by a pre-need seller less all withdrawals occasioned by delivery or cancellation; and

(24) Vault shall mean an item of burial or funeral merchandise or services which is an inground burial receptacle installed individually, as opposed to lawn crypts, which is constructed of concrete, steel, or any other material, and which acts as an outer container for the interment of human remains.

Source: Laws 1986, LB 643, § 2; Laws 1992, LB 757, § 13; Laws 1993, LB 121, § 126; Laws 1999, LB 107, § 1; Laws 2003, LB 131, § 19; Laws 2009, LB259, § 2.
Effective date March 6, 2009.

12-1107 Trustees; acceptance of funds; conditions; powers.

(1) Banks which do not have a separate trust department and building and loan associations and credit unions acting as trustees under the Burial Pre-

Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the Nebraska Uniform Trust Code, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

Source: Laws 1986, LB 643, § 7; Laws 1992, LB 757, § 14; Laws 1999, LB 107, § 2; Laws 2001, LB 56, § 35; Laws 2003, LB 130, § 112; Laws 2003, LB 131, § 20; Laws 2009, LB259, § 3.
Effective date March 6, 2009.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.
Uniform Principal and Income Act, see section 30-3116.

12-1116 Licenses; disciplinary actions; grounds; notice; administrative fine.

(1) The director may deny, revoke, or suspend any license of any pre-need seller or agent or may levy an administrative fine in accordance with subsection (3) of this section if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any of the provisions of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated by the director pursuant to such act;

(c) An act or condition exists which, if it had existed at the time of the original application of such licensee, would have resulted in the director refusing to issue such license; or

(d) The licensee, upon receipt of a written inquiry from the department, has failed to respond to such inquiry or has failed to request an additional reasonable amount of time to respond to such inquiry within fifteen business days after such receipt.

(2) Written notification shall be provided to the licensee upon the director's making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license; or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, the Administrative Procedure Act shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee's license, and the licensee shall surrender the license to the director.

(3) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the Burial Pre-Need Sale Act may, after

notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the act may waive his or her right to a hearing and consent to such discipline as the director determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 16; Laws 1987, LB 93, § 3; Laws 2005, LB 119, § 4; Laws 2009, LB192, § 1.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 13
STATE VETERAN CEMETERY SYSTEM

Section
12-1301. Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

12-1301 Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

(1) The Director of Veterans' Affairs may establish and operate a state veteran cemetery system consisting of a facility in Box Butte County, a facility in Sarpy County, and the Nebraska Veterans' Memorial Cemetery in Hall County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property for the cemetery system shall be subject to the approval requirements of section 81-1108.33 notwithstanding the value of the real property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money in the Nebraska Veteran Cemetery System Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) The director may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. Any money in the fund available for investment shall be invested by the state investment officer

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

(9) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

Source: Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1; Laws 2009, LB154, § 1.
Effective date August 30, 2009.

Cross References

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

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.
5. Budgets.
(a) Nebraska Budget Act. 13-503 to 13-509.
(d) Budget Limitations. 13-518 to 13-520.
9. Political Subdivisions Tort Claims Act. 13-903.
20. Integrated Solid Waste Management. 13-2042.01.
22. Local Government Miscellaneous Expenditures. 13-2202.
26. Convention Center Facility Financing Assistance Act. 13-2610 to 13-2612.
30. Peace Officers. 13-3001 to 13-3005.

ARTICLE 5
BUDGETS

(a) NEBRASKA BUDGET ACT

Section
13-503. Terms, defined.
13-508. Adopted budget statement; certified taxable valuation; levy.
13-509. County assessor; certify taxable value; when.

(d) BUDGET LIMITATIONS

13-518. Terms, defined.
13-519. Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.
13-520. Limitations; not applicable to certain restricted funds.

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

For purposes of the Nebraska Budget Act, unless the context otherwise requires:

(1) Governing body shall mean the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board shall mean any governing body which has the power or duty to levy a tax;

(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax shall mean any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor shall mean the Auditor of Public Accounts;

(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund shall mean any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period shall mean the two fiscal years comprising a biennium commencing in odd-numbered years used by a city in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget shall mean a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2.
Effective date May 27, 2009.

Cross References

Joint Airport Authorities Act, see section 3-716.
Local Option Municipal Economic Development Act, see section 18-2701.
Nebraska County and City Lottery Act, see section 9-601.
Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-508 Adopted budget statement; certified taxable valuation; levy.

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

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

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

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

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1.
Effective date February 27, 2009.

13-509 County assessor; certify taxable value; when.

(1) On or before August 20 of each year, the county assessor shall (a) certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy and (b) certify to the State Department of Education the current taxable value of the taxable real and personal property subject to the applicable levy for all school districts. Current taxable value for real property shall mean

the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

(2) The valuation of any real and personal property annexed by a political subdivision on or after August 1 shall be considered in the taxable valuation of the annexing political subdivision the following year.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp.,1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1; Laws 2009, LB166, § 2.
Effective date February 27, 2009.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04 and after fiscal year 2004-05 until fiscal year 2007-08, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (iii) for fiscal year 2007-08 and each fiscal year thereafter, community college areas may exceed the base limitation to equal base revenue need calculated pursuant to section 85-2223;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, 77-27,136, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 60-3,184 to 60-3,190, and 77-27,137.03, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, state aid to community colleges paid under the Community College Foundation and Equalization Aid Act;

(e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136;

(f) For educational service units, state aid appropriated under sections 79-1241.01 to 79-1241.03; and

(g) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB218, section 1, with LB549, section 1, to reflect all amendments.

Note: Changes made by LB549 became effective August 30, 2009. Changes made by LB218 became operative July 1, 2011.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to 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. For fiscal years 2010-11 through 2013-14 in which a county will reassume the assessment function pursuant to section 77-1340 or 77-1340.04, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total budgeted for the reassumption of the assessment function. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 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 thirty days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered

voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB121, section 1, with LB501, section 1, to reflect all amendments.

Note: Changes made by LB121 became operative August 30, 2009. Changes made by LB 501 became effective August 30, 2009.

Cross References

Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, or (8) restricted funds budgeted to pay for the reassumption of the assessment function pursuant to section 77-1340 or 77-1340.04 in fiscal years 2010-11 through 2013-14.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2.
Operative date August 30, 2009.

Cross References

Emergency Management Act, see section 81-829.36.
Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 9
POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section
13-903. Terms, defined.

13-903 Terms, defined.

For purposes of the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610, unless the context otherwise requires:

(1) Political subdivision shall include villages, cities of all classes, counties, school districts, learning communities, public power districts, and all other units of local government, including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision shall not be construed to include any contractor with a political subdivision;

(2) Governing body shall mean the village board of a village, the city council of a city, the board of commissioners or board of supervisors of a county, the board of directors of a public power district, the governing board or other governing body of an entity created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, and any duly elected or appointed body holding the power and authority to determine the appropriations and expenditures of any other unit of local government;

(3) Employee of a political subdivision shall mean any one or more officers or employees of the political subdivision or any agency of the subdivision and shall include members of the governing body, duly appointed members of boards or commissions when they are acting in their official capacity, volunteer firefighters, and volunteer rescue squad personnel. Employee shall not be construed to include any contractor with a political subdivision; and

(4) Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death but shall not include any claim accruing before January 1, 1970.

Source: Laws 1969, c. 138, § 2, p. 628; Laws 1987, LB 258, § 4; R.S.Supp.,1987, § 23-2402; Laws 1991, LB 81, § 2; Laws 1996, LB 900, § 1019; Laws 1999, LB 87, § 55; Laws 2009, LB392, § 3.
Effective date May 27, 2009.

Cross References

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

ARTICLE 20
INTEGRATED SOLID WASTE MANAGEMENT

Section
13-2042.01. Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

13-2042.01 Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

(1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for each six cubic yards of uncompacted solid waste, for each three cubic yards of compacted solid waste, or for each ton of solid waste disposed of at landfills regulated by the department and originating in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated on a schedule agreed upon between the municipality or county and the department. The schedule shall be no more often than quarterly and no less often than annually.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and any factors affecting compliance with this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality

or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual reports.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for required reports, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section.

Source: Laws 1994, LB 1207, § 3; Laws 2009, LB180, § 1.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 22
LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section
13-2202. Terms, defined.

13-2202 Terms, defined.

For purposes of the Local Government Miscellaneous Expenditure Act:

(1) Elected and appointed officials and employees shall mean the elected and appointed officials and employees of any local government;

(2) Governing body shall mean, in the case of a city of any class, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, county hospital, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a municipal county, the council; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport authority, the airport authority board; in the

case of a weed control authority, the board; in the case of a county agricultural society, the board of governors; and in the case of a learning community, the learning community coordinating council;

(3) Local government shall mean cities of any class, villages, cemetery districts, community hospitals for two or more adjoining counties, county hospitals, road improvement districts, counties, townships, sanitary drainage districts, sanitary and improvement districts, school districts, rural or suburban fire protection districts, reclamation districts, natural resources districts, hospital districts, health districts, educational service units, community colleges, airport authorities, weed control authorities, county agricultural societies, and learning communities;

(4) Public funds shall mean such public funds as defined in section 13-503 as are under the direct control of governing bodies of local governments;

(5) Public meeting shall mean all regular, special, or called meetings, formal or informal, of any governing body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the governing body; and

(6) Volunteer shall mean a person who is not an elected or appointed official or an employee of a local government and who, at the request or with the permission of the local government, engages in activities related to the purposes or functions of the local government or for its general benefit.

Source: Laws 1993, LB 734, § 10; Laws 1997, LB 250, § 3; Laws 2001, LB 142, § 27; Laws 2009, LB392, § 4.
Effective date May 27, 2009.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section
13-2610. Convention Center Support Fund; created; use; investment; distribution to area with high concentration of poverty; development fund; committee.
13-2611. Bonds; issuance; election.
13-2612. Act; applications; limitation.

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 (i) showcase important historical aspects of such areas or (ii) assist with the reduction of street and gang violence in such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects 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; Laws 2009, LB63, § 1.
Effective date May 28, 2009.

Cross References

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

13-2611 Bonds; issuance; election.

(1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible facilities and appurtenant public facilities that are a part of the same project. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication as the applicant deems appropriate. The bonds shall have a stated maturity of thirty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty percent of the applicant's electors voting on the question as to their issuance at any election as defined in section 32-108. The face of the bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds of the applicant are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(2) All payments to political subdivisions under the Convention Center Facility Financing Assistance Act are made subject to specific appropriation for such purpose. Nothing in the act precludes the Legislature from amending or repealing the act at any time.

Source: Laws 1999, LB 382, § 11; Laws 2009, LB402, § 1.
Operative date August 30, 2009.

Cross References

Limitation on applications, see section 13-2612.

13-2612 Act; applications; limitation.

The board shall not accept applications for assistance under the Convention Center Facility Financing Assistance Act after December 31, 2012.

Source: Laws 1999, LB 382, § 12; Laws 2007, LB551, § 7; Laws 2009, LB402, § 2.
Operative date August 30, 2009.

ARTICLE 30

PEACE OFFICERS

Section
13-3001. Peace officer; production or disclosure of personal financial records; restrictions.
13-3002. Peace officer; release of photograph; restrictions.
13-3003. Peace officer; disciplinary action; inclusion in personnel record; restrictions.
13-3004. Peace officer; exercise of rights; no retaliation.
13-3005. City of first class and county sheriff; adopt rules and regulations governing peace officer removal, suspension, or demotion.

13-3001 Peace officer; production or disclosure of personal financial records; restrictions.

After an applicant is hired by any municipality or county as a peace officer, no municipality or county may require the peace officer to produce or disclose the peace officer's personal financial records except pursuant to a valid search warrant or subpoena. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 4.
Effective date August 30, 2009.

13-3002 Peace officer; release of photograph; restrictions.

No municipality or county shall publicly release a photograph of a peace officer who is the subject of an investigation without the written permission of the peace officer, except that the municipality or county may display a photograph of a peace officer to a prospective witness as part of an investigation and the municipality or county may provide a photograph of a peace officer to the investigating individual to display to a prospective witness as part of the investigation. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 5.
Effective date August 30, 2009.

13-3003 Peace officer; disciplinary action; inclusion in personnel record; restrictions.

No disciplinary action by any municipality or county may be included in a peace officer's personnel record unless such disciplinary action has been reduced to writing and the peace officer has been given a copy, and no correspondence may be included in a peace officer's personnel record unless the peace officer has been given a copy of the correspondence. The peace

officer shall sign a written acknowledgement of receipt for any copy of a disciplinary action. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 6.
Effective date August 30, 2009.

13-3004 Peace officer; exercise of rights; no retaliation.

No peace officer of any municipality or county may be discharged, subject to disciplinary action, or threatened with discharge or disciplinary action as retaliation for or solely by reason of the peace officer's exercise of his or her rights provided in section 17-107, 17-208, or 23-1734 or sections 13-3001 to 13-3004. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 7.
Effective date August 30, 2009.

13-3005 City of first class and county sheriff; adopt rules and regulations governing peace officer removal, suspension, or demotion.

(1) Except as otherwise provided in a collective-bargaining agreement, Chapter 19, article 18, or Chapter 23, article 17, any city of the first class and all county sheriffs shall adopt rules and regulations governing the removal, suspension with or without pay, or demotion of any peace officer, including the chief of police. Such rules and regulations shall include: (a) Provisions for giving notice and a copy of the written accusation to the peace officer; (b) the peace officer's right to have an attorney or representative retained by the peace officer present with him or her at all hearings or proceedings regarding the written accusation; (c) the right of the peace officer or his or her attorney or representative retained by the peace officer to be heard and present evidence; (d) the right of the peace officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation; and (e) a procedure for making application for an appeal. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(2) This section does not apply to a peace officer during his or her probationary period.

Source: Laws 2009, LB158, § 8.
Effective date August 30, 2009.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

Article.
1. General Powers. 14-102.
5. Fiscal Management, Revenue, and Finances.
(d) City Treasurer. 14-556.
8. Miscellaneous Provisions. 14-813.
21. Public Utilities. 14-2102.

ARTICLE 1
GENERAL POWERS

Section
14-102. Additional powers.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any

description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed in pursuance of this act to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city to be cut and destroyed so as to abate any

nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal,

disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System

of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire under the provisions of this act, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11.
Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB430, section 1, with LB503, section 11, to reflect all amendments.

Cross References

Concealed Handgun Permit Act, see section 69-2427.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.
"This act", defined, see section 14-101.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(d) CITY TREASURER

Section
14-556. City treasurer; authorized depositories; securities; conflict of interest.

(d) CITY TREASURER

14-556 City treasurer; authorized depositories; securities; conflict of interest.

(1) The city treasurer shall place all funds of the city, as the same accrue, on deposit in such banks, capital stock financial institutions, or qualifying mutual financial institutions within the city as shall agree to pay the highest rate of interest for the use of such funds so deposited. The city council is hereby directed to advertise for bids for rates for the deposit of such funds as is hereby contemplated.

(2) The banks, capital stock financial institutions, or qualifying mutual financial institutions referred to in subsection (1) of this section, so selected, shall:

(a) Give bond to the city for the safekeeping of such funds, and such city shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution or in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of the bank, capital stock financial institution, or qualifying mutual financial institution. All bonds of such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be deposited with and held by the city treasurer; or

(b) Give security as provided in the Public Funds Deposit Security Act.

(3) The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds.

(4) Section 77-2366 shall apply to deposits in capital stock financial institutions.

(5) Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1921, c. 116, art. IV, § 44, p. 491; C.S.1922, § 3670; C.S.1929, § 14-547; R.S.1943, § 14-556; Laws 1957, c. 54, § 1, p. 263; Laws 1959, c. 35, § 2, p. 193; Laws 1989, LB 33, § 9; Laws 1993, LB 157, § 1; Laws 1996, LB 1274, § 13; Laws 2001, LB 362, § 10; Laws 2009, LB259, § 4.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 8
MISCELLANEOUS PROVISIONS

Section
14-813. Awards, orders of council; appeals from; procedure; indigent appellant.

14-813 Awards, orders of council; appeals from; procedure; indigent appellant.

Whenever the right of appeal is conferred by this act, the procedure, unless otherwise provided, shall be substantially as follows: The claimant or appellant shall, within twenty days after the date of the order complained of, execute a bond to such city with sufficient surety to be approved by the clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs adjudged against the appellant. Such bond shall be filed in the office of the city clerk. Upon the request of the appellant and the payment by the appellant to the city clerk or his or her designee of the estimated cost of preparation of the transcript, the city clerk shall cause a complete transcript of the proceedings of the city relating to its decision to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is presented to the appellant, the appellant shall pay the amount of the cost of preparation in excess of the estimated amount already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay a bond or any costs associated with such transcript preparation. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. It shall be the duty of the claimant or appellant to file a petition in the district court as in the

commencement of an action within thirty days after the date of the order or award appealed from, and he or she shall also file such transcript before answer day. The proceedings of the district court shall thereafter be the same as on appeal from the county board. Any taxpayer may appeal from the allowance of any claim against the city by giving a bond and complying with this section.

This section shall not be so construed as to prevent the city council from once reconsidering its action on any claim or award upon ten days' notice to the parties interested.

Source: Laws 1921, c. 116, art. VII, § 13, p. 512; C.S.1922, § 3721; C.S.1929, § 14-813; R.S.1943, § 14-813; Laws 2009, LB441, § 1. Effective date August 30, 2009.

Cross References

"This act", defined, see section 14-101.

ARTICLE 21
PUBLIC UTILITIES

Section
14-2102. Board of directors; qualifications; election; outside member.

14-2102 Board of directors; qualifications; election; outside member.

In each metropolitan utilities district service area, there shall be a board of directors consisting of seven members. The members shall be elected as provided in section 32-540.

Registered voters within the boundaries of the district shall be registered voters of such district and shall be eligible for the office of director subject to the special qualification of residence for the outside member. The outside member specified in section 32-540 shall be a registered voter residing within the district but outside the corporate limits of the city of the metropolitan class for which the district was created.

In the event of the annexation of the area within which the outside member resides, he or she may continue to serve as the outside member until the expiration of the term of office for which such member was elected and until a successor is elected and qualified.

Source: Laws 1913, c. 143, § 3, p. 350; R.S.1913, § 4245; C.S.1922, § 3747; C.S.1929, § 14-1003; R.S.1943, § 14-1003; Laws 1945, c. 17, § 1, p. 121; Laws 1953, c. 22, § 1, p. 93; Laws 1961, c. 32, § 1, p. 152; Laws 1976, LB 665, § 1; Laws 1977, LB 201, § 3; R.S.1943, (1991), § 14-1003; Laws 1992, LB 746, § 2; Laws 1994, LB 76, § 477; Laws 2009, LB562, § 1.
Effective date August 30, 2009.

CHAPTER 15
CITIES OF THE PRIMARY CLASS

Article.
2. General Powers. 15-255 to 15-268.
8. Fiscal Management, Revenue, and Finances. 15-847, 15-849.
12. Appeals. 15-1202 to 15-1204.

ARTICLE 2
GENERAL POWERS

Section
15-255. Public safety; measures to protect.
15-258. Billiard halls; disorderly houses; desecration of Sabbath.
15-268. Weeds; destruction and removal; procedure.

15-255 Public safety; measures to protect.

A city of the primary class may prohibit riots, routs, noise, or disorderly assemblies; prevent use of firearms, rockets, powder, fireworks, or other dangerous and combustible material; prohibit carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, punish, fine, or set at work on streets or elsewhere vagrants and persons found without visible means of support or legitimate business; regulate and prevent the transportation of gunpowder or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or its products, or other explosives or inflammables; regulate use of lights in stables, shops, or other places and building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Source: Laws 1901, c. 16, § 129, LV, p. 141; R.S.1913, § 4465; C.S.1922, § 3850; C.S.1929, § 15-253; R.S.1943, § 15-255; Laws 2009, LB430, § 2.
Effective date August 30, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

15-258 Billiard halls; disorderly houses; desecration of Sabbath.

A city of the primary class may restrain, prohibit, and suppress unlicensed tippling shops, billiard tables, bowling alleys, houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, gambling houses, desecration of the Sabbath day, commonly called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon such day, all lotteries, all fraudulent devices and practices for the purposes of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conduct-

ed in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1901, c. 16, § 129, LVIII, p. 142; R.S.1913, § 4468; C.S. 1922, § 3853; C.S.1929, § 15-256; R.S.1943, § 15-258; Laws 1986, LB 1027, § 187; Laws 1991, LB 849, § 60; Laws 1993, LB 138, § 62; Laws 2009, LB503, § 12.
Effective date August 30, 2009.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

15-268 Weeds; destruction and removal; procedure.

A city of the primary class may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove the same therefrom and from the streets and alleys abutting thereon. If, after five days' notice by publication, by certified United States mail, or by the conspicuous posting of the notice on the lot or land upon which the nuisance exists, the owner or owners fail, neglect, or refuse to destroy or remove the nuisance, the city, through its proper officers, shall destroy and remove the nuisance, or cause the nuisance to be destroyed or removed, from the lot or lots or lands and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands, as provided by ordinance.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1; Laws 2009, LB495, § 2.
Effective date August 30, 2009.

ARTICLE 8

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section
15-847. Deposit of city funds; security in lieu of bond.
15-849. City funds; additional investments authorized.

15-847 Deposit of city funds; security in lieu of bond.

In lieu of the bond required by section 15-846, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the city treasurer. The penal sum of such bond or the sum of such security may be reduced in the amount of such deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1963, c. 54, § 3, p. 233; Laws 1987, LB 440, § 4; Laws 1989, LB 33, § 15; Laws 1989, LB 377, § 9; Laws 1992, LB 757,

§ 15; Laws 1995, LB 384, § 14; Laws 1996, LB 1274, § 15; Laws 2001, LB 362, § 16; Laws 2009, LB259, § 5.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

15-849 City funds; additional investments authorized.

The city treasurer may purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds pursuant to sections 15-846 to 15-848. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as prescribed in such sections. The penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1987, LB 440, § 6; Laws 1989, LB 33, § 17; Laws 1992, LB 757, § 16; Laws 1996, LB 1274, § 17; Laws 2001, LB 362, § 18; Laws 2009, LB259, § 6.
Effective date March 6, 2009.

ARTICLE 12

APPEALS

Section
15-1202. Appeal; procedure; fees; bond; indigent appellant.
15-1203. City clerk; duties.
15-1204. Petition on appeal; time for filing; indigency.

15-1202 Appeal; procedure; fees; bond; indigent appellant.

(1) The party appealing shall within thirty days after the date of the order or decision complained of (a) file a notice of appeal with the city clerk specifying the parties taking the appeal and the order or decision appealed from and serve a copy of the notice upon the city attorney and (b) deposit the fees and bond or undertaking required pursuant to subsection (2) of this section or file an affidavit pursuant to subsection (3) of this section. The notice of appeal shall serve as a praecipe for a transcript.

(2) Except as provided in subsection (3) of this section, the appellant shall:

(a) Deposit with the city clerk a docket fee in the amount of the filing fee in district court for cases originally commenced in district court;

(b) Deposit with the city clerk a cash bond or undertaking with at least one good and sufficient surety approved by the city clerk, in the amount of two hundred dollars, on condition that the appellant will satisfy any judgment and costs that may be adjudged against him or her; and

(c) Deposit with the city clerk the fees for the preparation of a certified and complete transcript of the proceedings of the city relating to the order or decision appealed.

(3)(a) An appellant may file with the city clerk an affidavit alleging that the appellant is indigent. The filing of such an affidavit shall relieve the appellant of

the duty to deposit any fee, bond, or undertaking required by subsection (2) of this section as a condition for the preparation of the transcript or the perfecting of the appeal by the appellant subject to the determination of the court as provided in section 15-1204. In conjunction with the filing of the petition for appeal as provided for in section 15-1204, the appellant shall file a copy of the affidavit alleging his or her indigency and the district court shall rule upon the issue of indigency prior to the consideration of any other matter relating to the appeal as provided in section 15-1204.

(b) An appellant determined to be indigent under this subsection shall not be required to deposit any fee, bond, or undertaking required by subsection (2) of this section. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family.

(c) An appellant determined not to be indigent shall, within thirty days after the determination, deposit with the city clerk the fees and bond or undertaking required by subsection (2) of this section. The appeal shall not proceed further until the city clerk notifies the court that the appropriate deposit has been made.

Source: Laws 1969, c. 65, § 2, p. 377; Laws 1983, LB 52, § 3; Laws 1988, LB 352, § 17; Laws 2009, LB441, § 2.
Effective date August 30, 2009.

15-1203 City clerk; duties.

(1) Except as provided in subsection (2) of this section, the city clerk, on payment to him or her of the costs of the transcript, shall transmit within fifteen days to the clerk of the district court the docket fee and a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of such fee and transcript, the clerk of the district court shall docket the appeal.

(2) If the appellant files an affidavit alleging that he or she is indigent pursuant to section 15-1202, the city clerk shall transmit within fifteen days to the clerk of the district court a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of the transcript, the clerk of the district court shall docket the appeal.

Source: Laws 1969, c. 65, § 3, p. 378; Laws 1983, LB 52, § 4; Laws 1988, LB 352, § 18; Laws 2009, LB441, § 3.
Effective date August 30, 2009.

15-1204 Petition on appeal; time for filing; indigency.

(1) The party appealing shall file a petition within thirty days after the date the transcript is filed in the district court.

(2) Except as provided in subsection (3) of this section, satisfaction of the requirements of subsections (1) and (2) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) Indigency shall be determined by the district court having jurisdiction of the appeal upon motion of the appellant before the court considers any other matter relating to the appeal. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as

the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. If the appellant is deemed to be indigent, the satisfaction of the requirements of subsections (1) and (3) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

Source: Laws 1969, c. 65, § 4, p. 378; Laws 1983, LB 52, § 5; Laws 1988, LB 352, § 19; Laws 2009, LB441, § 4.
Effective date August 30, 2009.

CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
1. Incorporation, Extensions, Additions, Wards. 16-117, 16-130.
2. General Powers. 16-226 to 16-242.
7. Fiscal Management, Revenue, and Finances. 16-713 to 16-716.

ARTICLE 1
INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section
16-117. Annexation; powers; procedure; hearing.
16-130. Annexation by city within county between 100,000 and 200,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

16-117 Annexation; powers; procedure; hearing.

(1) Except as provided in sections 13-1111 to 13-1120 and 16-130 and subject to this section, the mayor and city council of a city of the first class may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of a city of the first class over any agricultural lands which are rural in character.

(2) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(3) The city council proposing to annex land under the authority of this section shall first adopt both a resolution stating that the city is proposing the annexation of the land and a plan for extending city services to the land. The resolution shall state:

(a) The time, date, and location of the public hearing required by subsection (5) of this section;

(b) A description of the boundaries of the land proposed for annexation; and

(c) That the plan of the city for the extension of city services to the land proposed for annexation is available for inspection during regular business hours in the office of the city clerk.

(4) The plan adopted by the city council shall contain sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services to the land proposed for annexation. The plan shall (a) state the estimated cost impact of providing the services to such land, (b) state the method by which the city plans to finance the extension of services to the land and how any services already provided to the land will be maintained, (c) include a timetable for extending services to the land proposed for annexation, and (d) include a map drawn to scale clearly delineating the

land proposed for annexation, the current boundaries of the city, the proposed boundaries of the city after the annexation, and the general land-use pattern in the land proposed for annexation.

(5) A public hearing on the proposed annexation shall be held within sixty days following the adoption of the resolution proposing to annex land to allow the city council to receive testimony from interested persons. The city council may recess the hearing, for good cause, to a time and date specified at the hearing.

(6) A copy of the resolution providing for the public hearing shall be published in the official newspaper in the city at least once not less than ten days preceding the date of the public hearing. A map drawn to scale delineating the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

(7) Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with subsections (3) through (6) of this section.

(8) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

Source: Laws 1967, c. 64, § 1, p. 213; Laws 1989, LB 421, § 1; Laws 2007, LB11, § 1; Laws 2009, LB495, § 3.
Effective date August 30, 2009.

16-130 Annexation by city within county between 100,000 and 200,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the first class located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants.

(2) Except as provided in sections 13-1111 to 13-1120 and subject to this section, the mayor and city council of a city of the first class described in subsection (1) of this section may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of such a city over any agricultural lands which are rural in character.

(3) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(4) Any owner of property contiguous or adjacent to such a city may by petition request that such property be included within the corporate limits of such city.

(5) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

(6) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city, the city clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(7) Prior to the final adoption of the annexation ordinance, the minutes of the city council meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (6) of this section.

(8) No additional or further notice beyond that required by subsection (6) of this section shall be necessary in the event (a) that the scheduled city council public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council prior to formal passage of the annexation ordinance.

(9) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(10) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council.

(11) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council.

Source: Laws 2009, LB495, § 4.
Effective date August 30, 2009.

ARTICLE 2
GENERAL POWERS

Section
16-226. Billiard halls; bowling alleys; disorderly houses; gambling; desecration of Sabbath.
16-227. Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.
16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.
16-242. Cemeteries; maintenance; funds; how used.

16-226 Billiard halls; bowling alleys; disorderly houses; gambling; desecration of Sabbath.

A city of the first class by ordinance may regulate, prohibit, and suppress unlicensed tippling shops, billiard tables, and bowling alleys, may restrain houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, gambling houses, desecration of the Sabbath day, commonly called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon such day, all lotteries, all fraudulent devices and practices for the purpose of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1901, c. 18, § 48, XXXIII, p. 254; R.S.1913, § 4842; C.S. 1922, § 4010; C.S.1929, § 16-227; R.S.1943, § 16-226; Laws 1986, LB 1027, § 188; Laws 1991, LB 849, § 61; Laws 1993, LB 138, § 63; Laws 2009, LB503, § 13.
Effective date August 30, 2009.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

16-227 Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.

A city of the first class may prevent and restrain riots, routs, noises, disturbances, breach of the peace, or disorderly assemblies in any street, house, or place in the city; regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings; regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, regulate, punish, fine, or set at work on the streets or elsewhere all vagabonds and persons found in the city without visible means of support or some legitimate business; regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch,

resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228; R.S.1943, § 16-227; Laws 2009, LB430, § 3.
Effective date August 30, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Except as provided in subsection (6) of this section, the city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Except as provided in subsection (6) of this section, any city of the first class may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

(6) A city of the first class by ordinance may declare it to be a nuisance to permit or maintain any growth of eight inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground located within the corporate limits of the city during any calendar year if, within the same calendar year, the city has, pursuant to subsection (4) of this section, acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches in height on the same lot or piece of ground and had to seek recovery of the costs and expenses of such work from the owner.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5.
Effective date August 30, 2009.

16-242 Cemeteries; maintenance; funds; how used.

(1) A city of the first class may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto owned by such city. It may construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

(2) After the burial and cemetery grounds are fully paid for, the city may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for

cemetery purposes as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(3) The city may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(4) The city treasurer shall be the custodian of such funds, and the same shall be invested by a board composed of the mayor, city treasurer, and city clerk.

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

Source: Laws 1901, c. 18, § 48, XLVIII, p. 258; Laws 1913, c. 256, § 1, p. 790; R.S.1913, § 4858; C.S.1922, § 4026; C.S.1929, § 16-243; R.S.1943, § 16-242; Laws 2005, LB 262, § 2; Laws 2009, LB500, § 2.
Effective date August 30, 2009.

ARTICLE 7
FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section
16-713. City funds; certificates of deposit; time deposits; security required.
16-715. City funds; depository; security in lieu of bond; authorized.
16-716. City funds; depositories; maximum deposits; liability of treasurer.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer may, upon resolution of the mayor and council authorizing the same, purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds under the provisions of sections 16-712, 16-714, and 16-715. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as set forth in sections 16-714 and 16-715, except that the penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1901, c. 18, § 85, p. 293; R.S.1913, § 4981; C.S.1922, § 4150; C.S.1929, § 16-712; R.S.1943, § 16-713; Laws 1959, c.

48, § 2, p. 235; Laws 1969, c. 84, § 4, p. 425; Laws 1989, LB 33, § 19; Laws 1992, LB 757, § 17; Laws 1996, LB 1274, § 19; Laws 2001, LB 362, § 20; Laws 2009, LB259, § 7.
Effective date March 6, 2009.

16-715 City funds; depository; security in lieu of bond; authorized.

In lieu of the bond required by section 16-714, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the city clerk. The penal sum of such bond shall be equal to or greater than the amount of the deposit in excess of that portion of such deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-715; Laws 1959, c. 263, § 5, p. 926; Laws 1969, c. 84, § 6, p. 426; Laws 1972, LB 1152, § 1; Laws 1977, LB 266, § 1; Laws 1987, LB 440, § 7; Laws 1989, LB 33, § 21; Laws 1989, LB 377, § 10; Laws 1992, LB 757, § 18; Laws 1996, LB 1274, § 20; Laws 2001, LB 362, § 22; Laws 2009, LB259, § 8.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution if the bank, capital stock financial institution, or qualifying mutual financial institution gives a surety bond, nor in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond, more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution, and the amount so on deposit any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the paid-up capital stock and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution.

The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the mayor as provided in section 16-714 or which has, in lieu of a surety bond, given security as provided in section 16-715.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943,

§ 16-716; Laws 1981, LB 491, § 1; Laws 1993, LB 157, § 2; Laws 1996, LB 1274, § 21; Laws 2001, LB 362, § 23; Laws 2002, LB 860, § 1; Laws 2009, LB259, § 9.
Effective date March 6, 2009.

CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

Article.
1. Laws Applicable Only to Cities of the Second Class. 17-107.
2. Laws Applicable Only to Villages. 17-208.
4. Change of Boundary; Additions.
   (b) Annexation of Territory. 17-405.01, 17-407.
5. General Grant of Power. 17-556, 17-563.
6. Elections, Officers, Ordinances.
   (b) Officers. 17-607.
7. Fiscal Management. 17-720.
9. Particular Municipal Enterprises.
   (c) Cemeteries. 17-936.

ARTICLE 1
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section
17-107. Mayor; qualifications; election; officers; appointment; removal; police officers; appointment; removal, demotion, or suspension; procedure.

17-107 Mayor; qualifications; election; officers; appointment; removal; police officers; appointment; removal, demotion, or suspension; procedure.

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568. The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council may be removed, demoted, or suspended at any time by the mayor as provided in subsection (2) of this section. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

(2) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (a) Provisions for giving notice and a copy of the written accusation to the police officer; (b) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (c) the right of the police officer or his or her attorney

or representative retained by the police officer to be heard and present evidence; and (d) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(3) This section does not apply to a police officer during his or her probationary period.

Source: Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1; Laws 2009, LB158, § 1.
Effective date August 30, 2009.

Cross References

Election Act, see section 32-101.

ARTICLE 2
LAWS APPLICABLE ONLY TO VILLAGES

Section
17-208. Appointive officers; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

17-208 Appointive officers; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

(1)(a) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal or chief of police. Pursuant to subsection (2) of this section, the village marshal or chief of police or any other police officer may appeal to the village board his or her removal, demotion, or

suspension with or without pay. After a hearing, the village board may uphold, reverse, or modify the action.

(b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police, upon the written accusation of the village marshal or chief of police, the chairperson, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the action. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

(2) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal or chief of police, the marshal or chief of police may be appointed to the board and serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations. The appointees

shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Source: Laws 1879, § 47, p. 204; Laws 1885, c. 18, § 1, p. 158; Laws 1895, c. 15, § 1, p. 110; Laws 1911, c. 20, § 1, p. 137; R.S.1913, § 5058; Laws 1919, c. 165, § 1, p. 369; C.S.1922, § 4230; C.S. 1929, § 17-208; R.S.1943, § 17-208; Laws 1995, LB 346, § 2; Laws 1996, LB 1162, § 2; Laws 2009, LB158, § 2.
Effective date August 30, 2009.

ARTICLE 4

CHANGE OF BOUNDARY; ADDITIONS

(b) ANNEXATION OF TERRITORY

Section
17-405.01. Annexation; powers; restrictions.
17-407. Annexation by city or village within county between 100,000 and 200,000 inhabitants; mayor and council or chairperson and board of trustees; powers; notice; contents; liability; limitation on action.

(b) ANNEXATION OF TERRITORY

17-405.01 Annexation; powers; restrictions.

(1) Except as provided in subsection (2) of this section and section 17-407, the mayor and council of any city of the second class or the chairperson and members of the board of trustees of any village may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the board of trustees of any village may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law and sections 18-2145 to 18-2154 when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising such jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express

agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For the purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

Source: Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1; Laws 2009, LB495, § 6.
Effective date August 30, 2009.

Cross References

Community Development Law, see section 18-2101.

17-407 Annexation by city or village within county between 100,000 and 200,000 inhabitants; mayor and council or chairperson and board of trustees; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants.

(2) The mayor and council of any city of the second class or the chairperson and members of the board of trustees of any village described in subsection (1) of this section may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any such municipality over any agricultural lands which are rural in character.

(3) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city or village, the city or village clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or village or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city or village; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission

on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(4) Prior to the final adoption of the annexation ordinance, the minutes of the city council or village board meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (3) of this section.

(5) No additional or further notice beyond that required by subsection (3) of this section shall be necessary in the event (a) that the scheduled city council or village board public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council or village board prior to formal passage of the annexation ordinance.

(6) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the second class or village either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(7) Except for a willful or deliberate failure to cause notice to be given, the city or village and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

(8) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council or village board.

Source: Laws 2009, LB495, § 7.
Effective date August 30, 2009.

ARTICLE 5
GENERAL GRANT OF POWER

Section
17-556. Public safety; firearms; explosives; riots; regulation.
17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.

17-556 Public safety; firearms; explosives; riots; regulation.

Cities of the second class and villages shall have power to prevent and restrain riots, routs, noises, disturbances, or disorderly assemblages; to regulate, prevent, restrain, or remove nuisances in residential parts of municipalities and to designate what shall be considered a nuisance; to regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or

in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; and to arrest, regulate, punish, fine, or set at work on the streets or elsewhere all vagrants and persons found without means of support or some legitimate business.

Source: Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454; R.S.1943, § 17-556; Laws 2009, LB430, § 4.
Effective date August 30, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.

(1) Except as provided in subsection (6) of this section, a city of the second class and village by ordinance (a) may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon, (b) may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.

(2) Except as provided in subsection (6) of this section, any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

(6) A city of the second class or village by ordinance may declare it to be a nuisance to permit or maintain any growth of eight inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground located within the corporate limits of the city or village during any calendar year if, within the same calendar year, the city has, pursuant to subsection (4) of this section, acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches in height on the same lot or piece of ground and had to seek recovery of the costs and expenses of such work from the owner.

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8.
Effective date August 30, 2009.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(b) OFFICERS

Section
17-607. Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(b) OFFICERS

17-607 Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city or village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of

the board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) The council or board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured or guaranteed by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, to secure the payment of all such deposits and accretions. The council or board shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

Source: Laws 1879, § 65, p. 209; R.S.1913, § 5149; Laws 1921, c. 304, § 1, p. 961; C.S.1922, § 4324; Laws 1927, c. 38, § 1, p. 168; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 124; Laws 1935, c. 140, § 2, p. 515; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(1), p. 121; R.S.1943, § 17-607; Laws 1957, c. 54, § 3, p. 264; Laws 1989, LB 33, § 22; Laws 1992, LB 757, § 19; Laws 1996, LB 1274, § 22; Laws 2001, LB 362, § 24; Laws 2003, LB 175, § 1; Laws 2009, LB259, § 10.
Effective date March 6, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 7
FISCAL MANAGEMENT

Section
17-720. Certificates of deposit; time deposits; security required.

17-720 Certificates of deposit; time deposits; security required.

The city or village treasurer of cities of the second class and villages may, upon resolution of the mayor and council or board of trustees authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured or guaranteed by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in sections 16-714 to 16-716 as of the time the deposit is made. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 84, § 1, p. 424; Laws 1987, LB 440, § 8; Laws 1990, LB 825, § 1; Laws 1993, LB 157, § 3; Laws 1996, LB 1274, § 23; Laws 2001, LB 362, § 25; Laws 2009, LB259, § 11.
Effective date March 6, 2009.

ARTICLE 9
PARTICULAR MUNICIPAL ENTERPRISES

(c) CEMETERIES

Section
17-936. Existing cemetery association; transfer of funds.

(c) CEMETERIES

17-936 Existing cemetery association; transfer of funds.

In case of the transfer of the management and control of such village or city cemetery, as provided in sections 17-934 and 17-935, the cemetery board erected under section 12-401 shall have no jurisdiction over the management and control of such cemetery after the transfer. In the event of such transfer, any funds or any money to the credit of the cemetery fund or any perpetual fund created under section 12-402, shall be paid over by the village treasurer of such village or by the city treasurer of such city to the treasurer of the cemetery association; and all endowments contemplated under section 12-301 to such village or city cemetery shall vest absolutely in the cemetery association to whom the control and management of such cemetery shall have been transferred.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-936; Laws 1959, c. 49, § 3, p. 239; Laws 2009, LB500, § 3. Effective date August 30, 2009.

CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.
12. Miscellaneous Taxes. 18-1214.
17. Miscellaneous. 18-1703 to 18-1741.02.
21. Community Development. 18-2102.01.
29. Urban Growth Districts. 18-2901.

ARTICLE 12
MISCELLANEOUS TAXES

Section
18-1214. Motor vehicles; local taxation; credited to road fund; use.

18-1214 Motor vehicles; local taxation; credited to road fund; use.

All cities and villages may levy a tax on all motor vehicles owned or used in such city or village. Until the implementation date designated by the Director of Motor Vehicles under section 23-186, the tax shall be paid to the designated county official of the county in which such city or village is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. Such taxes shall be remitted to the county treasurer for credit to the road fund of such city or village. On and after the implementation date designated under section 23-186, the tax shall be paid to the county treasurer for credit to such road fund. Such funds shall be used by such city or village for constructing, resurfacing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

Source: Laws 1963, c. 348, § 3, p. 1119; Laws 1988, LB 958, § 1; Laws 1989, LB 57, § 1; Laws 1993, LB 112, § 2; Laws 2005, LB 274, § 224; Laws 2009, LB49, § 1.
Effective date August 30, 2009.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 17
MISCELLANEOUS

Section
18-1703. Ownership, possession, and transportation of concealed handguns; power of cities and villages; existing ordinance, permit, or regulation; null and void.
18-1739. Handicapped or disabled persons; parking; permits; contents; issuance; duplicate permit.
18-1741.02. Handicapped parking infraction; penalties.

18-1703 Ownership, possession, and transportation of concealed handguns; power of cities and villages; existing ordinance, permit, or regulation; null and void.

Cities and villages shall not have the power to regulate the ownership, possession, or transportation of a concealed handgun, as such ownership, possession, or transportation is authorized under the Concealed Handgun Permit Act, except as expressly provided by state law. Any existing city or village ordinance, permit, or regulation regulating the ownership, possession, or transportation of a concealed handgun, as such ownership, possession, or transportation is authorized under the act, is declared to be null and void as against any permitholder possessing a valid permit under the act.

Source: Laws 2009, LB430, § 5.
Effective date August 30, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

18-1739 Handicapped or disabled persons; parking; permits; contents; issuance; duplicate permit.

(1) The permit to be issued pursuant to section 18-1738 or 18-1738.01 shall be constructed of a durable plastic designed to resist normal wear or fading for the term of the permit's issuance and printed so as to minimize the possibility of alteration following issuance. The permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the rules and regulations adopted and promulgated by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on January 1, 2009.

(2) In addition to the requirements of subsection (1) of this section, the permit shall show the expiration date and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom it is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the Department of Motor Vehicles. The expiration date information shall be distinctively color-coded so as to identify by color the year in which the permit is due to expire.

(3) No permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

(4) A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the clerk or designated county official or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued.

Source: Laws 1977, LB 13, § 4; Laws 1979, LB 146, § 4; Laws 1980, LB 717, § 6; Laws 1984, LB 482, § 2; Laws 1987, LB 598, § 5; Laws 1989, LB 516, § 2; Laws 1992, LB 928, § 3; Laws 1995, LB 593, § 5; Laws 1996, LB 1211, § 6; Laws 2001, LB 31, § 1; Laws 2001, LB 809, § 6; Laws 2009, LB331, § 1.
Operative date August 30, 2009.

18-1741.02 Handicapped parking infraction; penalties.

Any person found guilty of a handicapped parking infraction shall be fined (1) not more than one hundred fifty dollars for the first offense, (2) not more than three hundred dollars for a second offense within a one-year period, and (3) not more than five hundred dollars for a third or subsequent offense within a one-year period.

Source: Laws 1993, LB 632, § 2; Laws 2009, LB524, § 1.
Effective date August 30, 2009.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section
18-2102.01. Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

18-2102.01 Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.

(1) Whenever an authority or limited authority is created it shall bear the name of the city creating it and shall be legally known as the Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village) or the Limited Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village).

(2) When it is determined by the governing body of any city by ordinance in the exercise of its discretion that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of the city or, if the mayor shall fail to act within ninety days after the passage of the ordinance, the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of the city, shall appoint five or seven persons who shall constitute the authority or the limited authority. The terms of office of the members of a five-member authority initially appointed shall be for one year, two years, three years, four years, and five years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. The terms of office of the members of a seven-member authority initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. As the terms of the members of the authority expire in cities not having the city manager form of government, the mayor, with the approval of the governing body of the city, shall appoint or reappoint a member of the authority for a term of five years to succeed the member whose term expires. In cities having the city manager form of government, the city manager shall appoint or reappoint the members with the approval of the governing body. The terms of office of the members of a limited community redevelopment authority shall be for the duration of only one single specific limited pilot project authorized in

the ordinance creating the limited community redevelopment authority, and the terms of the members of a limited community redevelopment authority shall expire upon the completion of the single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority.

A governing body may at its option submit an ordinance which creates a community redevelopment authority or a limited community redevelopment authority to the electors of the city for approval by a majority vote of the electors voting on the ordinance. On submitting the ordinance for approval, the governing body is authorized to call, by the ordinance, a special or general election and to submit, after thirty days' notice of the time and place of holding the election and according to the manner and method otherwise provided by law for the calling, conducting, canvassing, and certifying of the result of city elections on the submission of propositions to the electors, the proposition to be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Community Redevelopment Authority of the City (or Village) of ..... (name of city or village)?

... Yes

... No.

When the ordinance submitted to the electors for approval by a majority vote of the electors voting on the ordinance is to create a limited community redevelopment authority the proposition shall be stated on the ballot as follows:

Shall the City (or Village) of ..... (name of city or village) create a Limited Community Redevelopment Authority of the City (or Village) of ..... (name of city or village)?

... Yes

... No.

Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the authority so appointed shall hold office until their successors have been appointed and qualified. Members of a limited authority shall hold office as provided in this section. All members of the authority shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred.

(3) Any authority established under this section shall organize by electing one of its members chairperson and another vice-chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by the concurrence of three members of a five-member authority or four members of a seven-member authority present and voting at a meeting of the authority. Orders, requisitions, warrants, and

other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

(4) No member or employee of any authority established under this section shall have any interest directly or indirectly in any contract for property, materials, or services to be required by such authority.

(5) The authority shall keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the city.

(6) The governing body of a city creating a community redevelopment authority or a limited community redevelopment authority is hereby authorized to appropriate and loan to the authority a sum not exceeding ten thousand dollars for the purposes of paying expenses of organizing and supervising the work of the authority at the beginning of its activities. The loan shall be authorized by resolution of the governing body which shall set forth the terms and time of the repayment of the loan. The loan may be appropriated out of the general funds or any sinking fund.

(7) All income, revenue, profits, and other funds received by any authority established under this section from whatever source derived, or appropriated by the city, or realized from tax receipts or comprised in the special revenue fund of the city designated for the authority or from the proceeds of bonds, or otherwise, shall be deposited with the city treasurer as ex officio treasurer of the authority without commingling the money with any other money under his or her control and disbursed by him or her by check, draft, or order only upon warrants, orders, or requisitions by the chairperson of the authority or other person authorized by the authority which shall state distinctly the purpose for which the same are drawn. A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection. The authority may contract with the holders of any of its bonds or notes as to collection, custody, securing investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes. The authority may carry out the contract notwithstanding that such contract may be inconsistent with the previous provisions of this subdivision. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for the deposits of money of any authority established under the provisions of this section pursuant to the Public Funds Deposit Security Act. Section 77-2366 applies to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 52, § 3, p. 248; Laws 1961, c. 61, § 2, p. 224; Laws 1963, c. 89, § 9, p. 307; R.S.Supp.,1963, § 19-2602.01; Laws 1965, c. 74, § 2, p. 300; Laws 1967, c. 87, § 1, p. 273; Laws 1969, c. 106, § 1, p. 484; Laws 1969, c. 107, § 1, p. 499; Laws 1989, LB

33, § 23; Laws 1997, LB 875, § 4; Laws 1999, LB 396, § 19; Laws 2001, LB 362, § 26; Laws 2009, LB339, § 1.
Effective date August 30, 2009.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 29
URBAN GROWTH DISTRICTS

Section
18-2901. Urban growth district; authorized; urban growth bonds and refunding bonds.

18-2901 Urban growth district; authorized; urban growth bonds and refunding bonds.

(1) The Legislature recognizes that there is a growing concern among municipalities that infrastructure costs and needs are great, especially in areas that are on the edge of or near the municipal boundaries and in need of development resources, and the governing bodies of municipalities must identify and develop financing mechanisms to respond to all infrastructure needs in an effective and efficient manner. The authorization of urban growth bonds, with local option sales and use tax revenue identified as the source of financing for the bonds, will encourage municipalities to use such revenue to bond infrastructure needs.

(2) The governing body of a municipality may create one or more urban growth districts for the purpose of using local option sales and use tax revenue to finance municipal infrastructure needs. An urban growth district may be in an area along the edge of a municipality's boundary or in any other growth area designated by the governing body, except that the territory of each urban growth district shall be (a) within the municipality's corporate limits and (b) outside the municipality's corporate limits as they existed as of the date twenty years prior to the issuance of any urban growth bonds by a municipality under the authority of this section.

(3) The governing body shall establish an urban growth district by ordinance. The ordinance shall include:

(a) A description of the boundaries of the proposed district; and

(b) The local option sales tax rate and estimated urban growth local option sales and use tax revenue anticipated to be identified as a result of the creation of the district.

(4) Any municipality that has established an urban growth district may, by ordinance approved by a vote of two-thirds of the members of its governing body, issue urban growth bonds and refunding bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the urban growth district and in any other area of the municipality. The bonds shall be secured as to payment by a pledge, as determined by the municipality, of the urban growth local option sales and use tax revenue and shall mature not later than twenty-five years after the date of issuance. Annual debt service on all bonds issued with respect to an urban growth district pursuant to this section shall not exceed the urban growth local option sales and use tax revenue with respect to such district for the fiscal year

prior to the fiscal year in which the current series of such bonds are issued. For purposes of this section, urban growth local option sales and use tax revenue means the municipality's total local option sales and use tax revenue multiplied by the ratio of the area included in the urban growth district to the total area of the municipality.

(5) The issuance of urban growth bonds by any municipality under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of municipalities to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any municipality which issues urban growth bonds under the authority of this section shall levy property taxes upon all the taxable property in the municipality at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with the urban growth local option sales and use tax revenue pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient to pay the principal of and interest on such urban growth bonds as they severally mature.

Source: Laws 2009, LB85, § 1.
Effective date August 30, 2009.

CHAPTER 19
CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

Article.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.). 19-916.
24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2424.
50. Annexation. (Applicable to cities of the first or second class and villages.) 19-5001.
51. Investment of Public Endowment Funds. (Applicable to cities of more than 5,000 population.) 19-5101.

ARTICLE 9
CITY PLANNING, ZONING
(Applicable to cities of the first or second class and villages.)

Section
19-916. Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect; filing and recording.

19-916 Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect; filing and recording.

(1) The local legislative body shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such municipality, or land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across such land, and to compel the owners of any such land that are subdividing, platting, or laying out such land to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance with the ordinance as provided in sections 16-901 to 16-905 and sections 17-1001 to 17-1004. No addition shall have any validity, right, or privileges as an addition, and no plat of land or, in the absence of a plat, no instrument subdividing land within the corporate limits of any such municipality or of any land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, shall be recorded or have any force or effect, unless the plat or instrument is approved by the legislative body, or its designated agent, and the legislative body's or agent's approval is endorsed on such plat or instrument.

(2) The legislative body may designate by ordinance an employee of such city or village to approve further subdivision of existing lots and blocks whenever all

required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

(3) All additions laid out contiguous or adjacent to the corporate limits may be included within the corporate limits and become a part of such municipality for all purposes whatsoever if approved by the legislative body of the city or village under this subsection. The proprietor or proprietors of any land within the corporate limits of any city of the first or second class or village, or of any land contiguous or adjacent to the corporate limits, may lay out such land into lots, blocks, streets, avenues, alleys, and other grounds under the name of ..... Addition to the City or Village of ....., and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots shall be designated by numbers, and streets, avenues, and other grounds, by names or numbers. Such plat shall be acknowledged before some officer authorized to take the acknowledgments of deeds, shall contain a dedication of the streets, alleys, and public grounds therein to the use and benefit of the public, and shall have appended a survey made by some competent surveyor with a certificate attached, certifying that he or she has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. The addition may become part of the municipality at such time as the addition is approved by the legislative body if (a) after giving notice of the time and place of the hearing as provided in section 19-904, the planning commission and the legislative body both hold public hearings on the inclusion of the addition within the corporate limits and (b) the legislative body votes to approve the inclusion of the addition within the corporate boundaries of the municipality in a separate vote from the vote approving the addition. Such hearings shall be separate from the public hearings held regarding approval of the addition. If the legislative body includes the addition within the corporate limits, the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all the laws, ordinances, rules, and regulations of the municipality to which such land is an addition. When such map or plat is made out, acknowledged, and certified, and has been approved by the local legislative body, the map or plat shall be filed and recorded in the office of the register of deeds and county assessor of the county. If the legislative body includes the addition within the corporate limits, such map or plat shall be equivalent to a deed in fee simple absolute to the municipality from the proprietor of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of the land as is therein set apart for public and municipal use, or is dedicated to charitable, religious, or educational purposes.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4811; C.S.1922, § 3979; C.S.1929, § 16-108; R.S.1943, § 16-112; Laws 1967, c. 66, § 1, p. 215; Laws 1974, LB 757, § 3; R.R.S.1943, § 16-112; Laws 1975, LB 410, § 2; Laws 1983, LB 71, § 10; Laws 2001, LB 210, § 1; Laws 2009, LB495, § 9.
Effective date August 30, 2009.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section
19-2424. City or village clerk; prepare transcript; cost; indigent appellant.

19-2424 City or village clerk; prepare transcript; cost; indigent appellant.

(1) Upon the request of the owner appealing a special assessment and the payment by him or her of the estimated cost of preparation of the transcript to the city or village clerk or such clerk's designee, the city or village clerk shall cause a complete transcript of the proceedings before such city or village to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is provided to the appellant, the appellant shall pay the amount of the cost of preparation which is in excess of the estimated cost already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay any costs associated with such transcript preparation.

(2) For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances.

Source: Laws 1975, LB 468, § 3; Laws 2009, LB441, § 5.
Effective date August 30, 2009.

ARTICLE 50

ANNEXATION

(Applicable to cities of the first or second class and villages.)

Section
19-5001. Written notice of proposed annexation; manner; contents; liability; limitation on action.

19-5001 Written notice of proposed annexation; manner; contents; liability; limitation on action.

(1) A city of the first or second class or village shall provide written notice of a proposed annexation to the owners of property within the area proposed for annexation in the manner set out in this section.

(2) Initial notice of the proposed annexation shall be sent to the owners of property within the area proposed for annexation by regular United States mail, postage prepaid, to the address of each owner of such property as it

appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the planning commission's public hearing on the proposed change with a certified letter to the clerk of any sanitary and improvement district if the annexation includes property located within the boundaries of such district. Such notice shall describe the area proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the planning commission's hearing and how further information regarding the annexation can be obtained, including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(3) A second notice of the proposed annexation shall be sent to the same owners of property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the public hearing of the city council or village board on the annexation. Such notice shall describe the area proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the hearing and how further information regarding the annexation can be obtained, including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary if the scheduled public hearing by the planning commission or city council or village board on the proposed annexation is adjourned, continued, or postponed until a later date.

(5) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the first or second class or village to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date after the formal acceptance or rejection of the annexation by the city council or village board.

(6) Except for a willful or deliberate failure to cause notice to be given, the city of the first or second class or village and its employees shall not be liable for any damage to any person resulting from failure to cause notice to be given as required by this section if a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

(7) For purposes of this section, owner means the owner of a piece of property as indicated on the records of the office of the register of deeds as provided to or made available to the city of the first or second class or village no earlier than the last business day before the twenty-fifth day preceding the

public hearing by the planning commission on the annexation proposed for the subject property.

Source: Laws 2009, LB495, § 1.
Effective date August 30, 2009.

ARTICLE 51

INVESTMENT OF PUBLIC ENDOWMENT FUNDS

(Applicable to cities of more than 5,000 population.)

Section
19-5101. Investment of public endowment funds; manner.

19-5101 Investment of public endowment funds; manner.

Pursuant to Article XI, section 1, of the Constitution of Nebraska, the Legislature authorizes the investment of public endowment funds by any city having a population of more than five thousand inhabitants in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine.

Source: Laws 2009, LB402, § 3.
Operative date May 23, 2009.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

Article.
17. Credit Unions
    (a) Credit Union Act. 21-17,115.
20. Business Corporation Act.
    (a) General Provisions. 21-2003 to 21-2015.
    (g) Shareholders. 21-2060.
    (n) Foreign Corporations. 21-20,177, 21-20,179.
    (o) Records and Reports. 21-20,186.
26. Limited Liability Companies. 21-2601, 21-2654.

ARTICLE 17
CREDIT UNIONS

(a) CREDIT UNION ACT

Section
21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of April 9, 2009, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15.
Operative date April 9, 2009.

ARTICLE 20
BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section
21-2003. Filing requirements.
21-2014. Terms, defined.
21-2015. Notice.

(g) SHAREHOLDERS

21-2060. Proxies.

(n) FOREIGN CORPORATIONS

21-20,177. Foreign corporation; service; consent to service of search warrant or subpoena.
21-20,179. Foreign corporation; revocation of certificate of authority; grounds.

(o) RECORDS AND REPORTS

21-20,186. Financial statements for shareholders.

(a) GENERAL PROVISIONS

21-2003 Filing requirements.

(1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 21-2004, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in sections 21-2033 and 21-20,176, the correct filing fee, and any tax, license fee, or penalty required by law. For purposes of this subsection, delivered means physical delivery of the document by hand, mail, or commercial delivery and does not include delivery by electronic transmission.

Source: Laws 1995, LB 109, § 3; Laws 2009, LB528, § 1.
Effective date August 30, 2009.

Cross References

Occupation tax, see Chapter 21, article 3.

21-2014 Terms, defined.

For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver or delivery shall mean any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 21-2015;

(8) Electronic transmission or electronically transmitted shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

(9) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

(10) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, state, United States, and foreign government;

(11) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

(12) Governmental subdivision shall include authority, county, district, and municipality;

(13) Individual shall include the estate of an incompetent or deceased individual;

(14) Notice shall have the same meaning as in section 21-2015;

(15) Person shall include individual and entity;

(16) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(17) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

(18) Record date shall mean the date established under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(19) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 21-2097 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(20) Share shall mean the unit into which the proprietary interests in a corporation are divided;

(21) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(22) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(23) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

(24) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

(25) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Source: Laws 1995, LB 109, § 14; Laws 2009, LB528, § 2.
Effective date August 30, 2009.

21-2015 Notice.

(1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person, by mail or other method of delivery, or by telephone or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective (a) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (b) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder shall be effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934 if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office, shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Source: Laws 1995, LB 109, § 15; Laws 2009, LB528, § 3.
Effective date August 30, 2009.

(g) SHAREHOLDERS

21-2060 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney in fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder or the shareholder's agent or attorney in fact authorized the transmission.

(3) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the

inspector of election or the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form or electronic transmission.

(4) An appointment of a proxy shall be revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 21-2068.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 21-2062 and to any express limitation on the proxy's authority appearing on the face of the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 1995, LB 109, § 60; Laws 2009, LB528, § 4.
Effective date August 30, 2009.

(n) FOREIGN CORPORATIONS

21-20,177 Foreign corporation; service; consent to service of search warrant or subpoena.

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 28-807 to 28-829, or for any other validly issued and properly served subpoena, including those authorized under section 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to

service of a subpoena or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Source: Laws 1995, LB 109, § 177; Laws 2009, LB97, § 1.
Operative date May 21, 2009.

21-20,179 Foreign corporation; revocation of certificate of authority; grounds.

The Secretary of State may commence a proceeding under section 21-20,180 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 21-20,175 or 21-20,176 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The foreign corporation or its agent for service of process does not comply with section 21-20,177; or

(5) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

Source: Laws 1995, LB 109, § 179; Laws 2009, LB97, § 2.
Operative date May 21, 2009.

(o) RECORDS AND REPORTS

21-20,186 Financial statements for shareholders.

(1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not delivered the statements, the corporation shall deliver to him or her the latest financial statements.

Source: Laws 1995, LB 109, § 186; Laws 2009, LB528, § 5.
Effective date August 30, 2009.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section
21-2601. Act, how cited.
21-2654. Charging order; authorized; procedure; effect.

21-2601 Act, how cited.

Sections 21-2601 to 21-2654 shall be known and may be cited as the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 1; Laws 1994, LB 884, § 25; Laws 1997, LB 44, § 7; Laws 2006, LB 647, § 4; Laws 2009, LB35, § 2.
Operative date August 30, 2009.

21-2654 Charging order; authorized; procedure; effect.

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of the transferee to receive any distribution to which the judgment debtor would otherwise have

been entitled with respect to the interest of the judgment debtor in the limited liability company.

(2) A charging order entered pursuant to this section constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

(3) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's interest in the limited liability company.

(4) The entry of a charging order pursuant to this section is the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's interest in the limited liability company.

(5) No creditor of a member of a limited liability company shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(6) A third party shall not be liable to a judgment creditor for distributions made by such third party directly to the judgment debtor that were made in good faith at the direction of the limited liability company.

(7) This section applies to all limited liability companies authorized under the Limited Liability Company Act.

Source: Laws 2009, LB35, § 1.
Operative date August 30, 2009.

CHAPTER 22
COUNTIES

Article.
1. Names and Boundaries of Counties. 22-161 to 22-172.01.

ARTICLE 1
NAMES AND BOUNDARIES OF COUNTIES

Section
22-161. Repealed. Laws 2009, LB 131, § 3.
22-161.01. Merrick.
22-172. Repealed. Laws 2009, LB 131, § 3.
22-172.01. Polk.

22-161 Repealed. Laws 2009, LB 131, § 3.

22-161.01 Merrick.

The county of Merrick is bounded as follows: Beginning at the northeast corner of township 16 north, range 3 west; thence west on the dividing line of townships 16 and 17 north, to the boundaries of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the north line of township 16 north; thence west, to the northwest corner of township 16 north, range 8 west; thence south on the dividing line of ranges 8 and 9 west to the middle of the south channel of the Platte River; thence northeast by the middle of said south channel to a point on the west line of section 19, township 14 north, range 4 west of the sixth principal meridian, said point being 2132.77 feet north of the southwest corner of the northwest quarter of said section 19; thence continuing on the middle of the south channel of the Platte River, and assuming the west line of said section 19 to have a bearing of south 1 degree, 46 minutes, 44 seconds east; the next 35 courses on said thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west,

317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of said section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds

east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north

17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24,

township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4,

township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk

County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the point of beginning.

Source: Laws 2009, LB131, § 1.
Effective date August 30, 2009.

22-172 Repealed. Laws 2009, LB 131, § 3.

22-172.01 Polk.

The county of Polk is bounded as follows: Beginning at the southwest corner of township 13 north, range 4 west; thence north, and on the west line of range 4 west, to the southwest corner of the northwest quarter of section 19, township 14 north, range 4 west of the sixth principal meridian; thence north 1 degree, 46 minutes, 44 seconds west (assumed bearing), and on the west line of the northwest quarter of said section 19, 2132.77 feet to the thread of stream of the south channel of the Platte River; the next 35 courses on said thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26

seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west, 317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of said section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska,

described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes,

38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north 17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51

feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30

feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22

degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the south bank of the north channel of the Platte River; thence northeasterly along the south bank of said Platte River to the east line of range 1 west; thence south, and on the east line of range 1 west to the southeast corner of township thirteen north, range one west; thence west on the south line of township 13 north, to the point of beginning.

Source: Laws 2009, LB131, § 2.
Effective date August 30, 2009.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.
1. General Provisions.
   (b) Powers and Duties of County Board. 23-120.
   (i) Motor Vehicle and Motorboat Services. 23-186.
   (j) Ordinances. 23-187 to 23-193.
2. Counties under Township Organization.
   (a) Adoption of Township Organization; General Provisions. 23-202.
   (d) Discontinuance of Township Organization. 23-294, 23-295.
12. County Attorney. 23-1201.02 to 23-1218.
17. Sheriff.
   (b) Merit System. 23-1734.
23. County Employees Retirement. 23-2306 to 23-2321.
32. County Assessor. 23-3202.

ARTICLE 1
GENERAL PROVISIONS

(b) POWERS AND DUTIES OF COUNTY BOARD

Section
23-120. Provide buildings; tax; levy authorized.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186. Consolidation of services; county board; designation of official; county treasurer; duties.

(j) ORDINANCES

23-187. Subjects regulated; power to enforce.
23-188. County board; notice; contents; public hearing.
23-189. Proof of ordinance; proof of adoption and publication.
23-190. County ordinance; reading by title; suspension of requirement; adoption; vote required; revision or amendment.
23-191. Style of ordinance; publication.
23-192. Ordinance; territorial application; copy provided to clerk of city and village within county; effective date; change of jurisdiction; effect.
23-193. County attorney; powers; filing of ordinances.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-120 Provide buildings; tax; levy authorized.

(1) The county board shall acquire, purchase, construct, renovate, remodel, furnish, equip, add to, improve, or provide a suitable courthouse, jail, and other county buildings and a site or sites therefor and for such purposes borrow money and issue the bonds of the county to pay for the same. Agreements entered into under section 25-412.03 shall be deemed to be in compliance with this section. The board shall keep such buildings in repair and provide suitable rooms and offices for the accommodation of the several courts of record, Nebraska Workers' Compensation Court or any judge thereof, Commissioner of Labor for the conduct and operation of the state free employment service, county board, county clerk, county treasurer, county sheriff, clerk of the district

court, county surveyor, county agricultural agent, and county attorney if the county attorney holds his or her office at the county seat and shall provide suitable furniture and equipment therefor. All such courts which desire such accommodation shall be suitably housed in the courthouse.

(2) No levy exceeding (a) two million dollars in counties having in excess of two hundred fifty thousand inhabitants, (b) one million dollars in counties having in excess of one hundred thousand inhabitants and not in excess of two hundred fifty thousand inhabitants, (c) three hundred thousand dollars in counties having in excess of thirty thousand inhabitants and not in excess of one hundred thousand inhabitants, or (d) one hundred fifty thousand dollars in all other counties shall be made within a one-year period for any of the purposes specified in subsection (1) of this section without first submitting the proposition to a vote of the people of the county at a general election or a special election ordered by the board for that purpose and obtaining the approval of a majority of the legal voters thereon.

(3)(a) The county board of any county in this state may, when requested so to do by petition signed by at least a majority of the legal voters in the county based on the average vote of the two preceding general elections, make an annual levy of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in the county for any of the purposes specified in subsection (1) of this section.

(b) If a county on the day it first initiates a project for any of the purposes specified in subsection (1) of this section had no bonded indebtedness payable from its general fund levy, the county board may make an annual levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property of the county for a project or projects for any of the purposes specified in subsection (1) of this section without the filing of a petition described in subdivision (3)(a) of this section. The county board shall designate the particular project for which such levy shall be expended, the period of years, which shall not exceed twenty, for which the tax will be levied for such project, and the number of cents of the levy for each year thereof. The county board may designate more than one project and levy a tax pursuant to this section for each such project, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each levy will not exceed the limitations specified in this subsection. Each levy for a project which is authorized by this subdivision may be imposed for such duration specified by the county board notwithstanding the contemporaneous existence or subsequent imposition of any other levy or levies for another project or projects imposed pursuant to this subdivision and notwithstanding the subsequent issuance by the county of bonded indebtedness payable from its general fund levy.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1889, c. 10, § 1, p. 83; Laws 1909, c. 20, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 175; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 615; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 148; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-120; Laws 1951, c. 46, § 1, p. 162; Laws 1953, c. 287, § 38, p. 952; Laws 1967, c. 119, § 1, p. 380; Laws 1969, c. 147, § 1, p. 704; Laws 1971, LB 999, § 1; Laws 1975, LB 97, § 5; Laws 1979, LB 187, § 94; Laws 1984, LB 683, § 1; Laws 1986,

LB 811, § 9; Laws 1988, LB 853, § 1; Laws 1992, LB 719A, § 94; Laws 1995, LB 286, § 1; Laws 1996, LB 1114, § 37; Laws 1999, LB 272, § 4; Laws 2009, LB294, § 1.
Effective date August 30, 2009.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186 Consolidation of services; county board; designation of official; county treasurer; duties.

(1) Until the implementation date designated by the Director of Motor Vehicles under subsection (2) of this section, a county board may consolidate, under the office of a designated county official, the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803. In a county in which a city of the metropolitan class is located, the county board may designate the county treasurer to provide the services. In any other county, the county board may designate the county assessor, the county clerk, or the county treasurer to provide the services.

(2) Beginning on an implementation date designated by the Director of Motor Vehicles, but no later than January 1, 2011, the county treasurer of each county shall be the county official who provides services to the public relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803.

Source: Laws 1993, LB 112, § 1; Laws 1995, LB 37, § 1; Laws 1996, LB 464, § 1; Laws 1997, LB 271, § 13; Laws 2003, LB 333, § 32; Laws 2005, LB 274, § 227; Laws 2005, LB 276, § 99; Laws 2009, LB49, § 2.
Effective date August 30, 2009.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
State Boat Act, see section 37-1201.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Graffiti on public or private property;

(d) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders; and

(e) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1.
Effective date August 30, 2009.

23-188 County board; notice; contents; public hearing.

A county board shall provide notice of the time when any county ordinance is set for consideration before the board. Such notice shall appear at least once a week for two weeks in a newspaper published or of general circulation in the county. The notice shall contain the entire wording of the ordinance and the time and place of the public hearing. The last publication of the notice shall be not less than five days nor more than two weeks prior to the time set for the public hearing on the adoption of the ordinance. A county board shall not take final action on the proposed ordinance until after at least one public hearing has been held thereon by the county board at which public comment regarding the proposed ordinance was permitted.

Source: Laws 2009, LB532, § 2.
Effective date August 30, 2009.

23-189 Proof of ordinance; proof of adoption and publication.

A county ordinance may be proved by the certificate of the county clerk under the seal of the county. The adoption and publication of the ordinance shall be sufficiently proved by a certificate under the seal of the county, from the county clerk, showing (1) that such ordinance was adopted and (2) when and in what paper the ordinance was published or when, by whom, and where the ordinance was posted.

Source: Laws 2009, LB532, § 3.
Effective date August 30, 2009.

23-190 County ordinance; reading by title; suspension of requirement; adoption; vote required; revision or amendment.

(1) A county ordinance shall be read by title on three different days unless three-fourths of the county board members, following the public hearing on the ordinance, vote to suspend this requirement. If such requirement is suspended, the ordinance shall be read by title or number and then moved for final adoption. Three-fourths of the county board members may require a reading of any such ordinance in full before adoption under either procedure set out in this section. The votes of each member shall be called aloud and recorded. To

adopt any ordinance, the concurrence of a majority of the whole number of the members of the county board shall be required.

(2) A county ordinance shall contain no subject which is not clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section that is amended is repealed.

Source: Laws 2009, LB532, § 4.
Effective date August 30, 2009.

23-191 Style of ordinance; publication.

The style of county ordinances shall be: ''Be it ordained by the county board of the county of .....,'' and all county ordinances shall, within fifteen days after they are adopted, be published in some newspaper published or of general circulation within the county.

Source: Laws 2009, LB532, § 5.
Effective date August 30, 2009.

23-192 Ordinance; territorial application; copy provided to clerk of city and village within county; effective date; change of jurisdiction; effect.

(1) No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the corporate boundaries of any incorporated city or village located in whole or in part within the county. No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the area outside of the corporate boundaries of any city or village in which such city or village has been granted and is exercising powers by ordinance on a similar subject matter. Every county ordinance adopted pursuant to sections 23-187 to 23-193 shall include one section defining the area of the county within which the county ordinance is effective. The ordinance shall be amended to reflect any changes in the area of the county's jurisdiction resulting from (a) annexation by a city or village, (b) action by a city or village to adopt an ordinance regarding similar subject matter to that of the county ordinance if the city or village ordinance is to be effective in areas beyond its corporate boundary, or (c) any changes in the area of jurisdiction of the city or village regarding such city or village ordinance.

(2) Before a county adopts an ordinance under sections 23-187 to 23-193, the county clerk shall provide a copy of the text of the ordinance to the clerk of each city and village within the county no later than seven days after the first reading of the ordinance or the public hearing on the ordinance, whichever occurs first. Within seven days after receiving a copy of the ordinance, the city or village shall respond to the county and provide a copy of any ordinance specifying where the city or village is enforcing an ordinance on similar subject matter outside its corporate boundaries. Any ordinance adopted by the county shall not be effective in the area in which the city or village is exercising jurisdiction. Prior to the adoption of the county ordinance, the section of the ordinance that defines the area of county jurisdiction shall be amended to show the removal of the area of the jurisdiction of such city or village as indicated in the city or village ordinance provided to the county from the description of the area within which the county ordinance will be effective. An ordinance adopted under sections 23-187 to 23-193 shall not be effective until fifteen days after its adoption.

(3) Any city or village located in whole or in part within a county that has adopted an ordinance pursuant to sections 23-187 to 23-193 which (a) annexes any territory, (b) adopts an ordinance on similar subject matter to that of the county ordinance and extends the jurisdiction of the city or village under such ordinance to areas beyond its corporate boundaries, or (c) changes the area beyond the corporate boundaries of the city or village within which the city or village exercises jurisdiction by ordinance on similar subject matter to that of the county ordinance shall provide to the county clerk a copy of the ordinance establishing and delineating its jurisdiction or any change to that jurisdiction within seven days after the adoption of the relevant city or village ordinance. Upon the effective date of the city or village ordinance, the county ordinance shall cease to be effective within the area in which the city or village has assumed jurisdiction. The county board shall promptly amend its ordinance to reflect the change in the area within which the county ordinance is effective.

Source: Laws 2009, LB532, § 6.
Effective date August 30, 2009.

23-193 County attorney; powers; filing of ordinances.

A county attorney may sign and prosecute a complaint in the county court for a violation of an ordinance of the county in which he or she serves as county attorney. No county may prosecute a complaint for a violation of an ordinance unless such county has on file with the court a current copy of the ordinances of such county. Subject to guidelines provided by the State Court Administrator, the court shall prescribe the form in which such ordinances shall be filed.

Source: Laws 2009, LB532, § 7.
Effective date August 30, 2009.

ARTICLE 2

COUNTIES UNDER TOWNSHIP ORGANIZATION

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section
23-202. Township organization; petition; election.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-294. Township organization; discontinuance; election; ballot; form.
23-295. Township organization; discontinuance; when effective.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-202 Township organization; petition; election.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question of township organization. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions. The questions on the ballot shall be respectively: For changing to township organization with a seven-member county board of supervisors; or Against changing to township organization.

(3) Elections shall be conducted as provided in the Election Act.

Source: Laws 1895, c. 28, § 2, p. 131; R.S.1913, § 988; C.S.1922, § 888; C.S.1929, § 26-202; R.S.1943, § 23-202; Laws 2008, LB269, § 4; Laws 2009, LB434, § 1.
Effective date August 30, 2009.

Cross References

Election Act, see section 32-101.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-294 Township organization; discontinuance; election; ballot; form.

(1) If the petition or county board resolution to discontinue township organization specifies a five-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinuance of township organization and creation of a five-member county board of commissioners; or Against changing to a commissioner form of county government.

(2) If the petition or county board resolution to discontinue township organization specifies a seven-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinuance of township organization and creation of a seven-member county board of commissioners; or Against changing to a commissioner form of county government.

(3) Elections shall be conducted regarding discontinuance of township organization as provided in the Election Act.

Source: Laws 1885, c. 43, § 3, p. 236; R.S.1913, § 1058; C.S.1922, § 960; C.S.1929, § 26-274; R.S.1943, § 23-294; Laws 2008, LB269, § 7; Laws 2009, LB434, § 2.
Effective date August 30, 2009.

Cross References

Election Act, see section 32-101.

23-295 Township organization; discontinuance; when effective.

If a majority of the votes cast on the question are for the discontinuance of township organization, then such organization shall cease to exist effective at the expiration of the supervisors' terms of office in January of the third calendar year following such election.

Source: Laws 1885, c. 43, § 4, p. 236; R.S.1913, § 1059; C.S.1922, § 961; C.S.1929, § 26-275; R.S.1943, § 23-295; Laws 2008, LB269, § 8; Laws 2009, LB434, § 3.
Effective date August 30, 2009.

ARTICLE 12
COUNTY ATTORNEY

Section
23-1201.02. County attorney; qualifications; exception.
23-1205. Acting county attorney; appointment; when authorized; compensation.
23-1212. Terms, defined.
23-1213. Nebraska County Attorney Standards Advisory Council; created; members; qualifications; appointment; terms; vacancy.

Section
23-1213.01. Guidelines to promote uniform and quality death investigations for county coroners; contents.
23-1213.02. Network of regional officials for death investigation support services.
23-1213.03. Coroner or deputy coroner; training; continuing education.
23-1218. Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

23-1201.02 County attorney; qualifications; exception.

(1) No person shall seek nomination or appointment for the office of county attorney in counties of Class 4, 5, 6, or 7, nor serve in that capacity, unless he or she has been admitted to the practice of law in this state for at least two years next preceding the date such person would take office and has practiced law actively in this state during such two-year period, except that if no person who meets the requirements of this subsection has filed for or sought such office by the filing deadline for nomination or by the deadline for applications for appointment, the provisions of this subsection shall not apply to any person seeking such office.

(2) No person shall seek nomination or appointment for the office of county attorney, nor serve in that capacity, unless he or she has been admitted to the practice of law in this state.

(3) The classification of counties in section 23-1114.01 applies for purposes of this section.

Source: Laws 1969, c. 142, § 1, p. 664; Laws 1993, LB 468, § 2; Laws 2009, LB55, § 1.
Effective date August 30, 2009.

Cross References

Classification of counties, see section 23-1114.01.

23-1205 Acting county attorney; appointment; when authorized; compensation.

Due to the absence, sickness, disability, or conflict of interest of the county attorney and his or her deputies, or upon request of the county attorney for good cause, the Supreme Court, the Court of Appeals, or any district court, separate juvenile court, or county court before which the cause may be heard may appoint an attorney to act as county attorney in any investigation, appearance, or trial by an order entered upon the minutes of the court. Such attorney shall be allowed compensation for such services as the court determines, to be paid by order of the county treasurer upon presenting to the county board the certificate of the judge before whom the cause was tried certifying to services rendered by such attorney and the amount of compensation.

Source: Laws 1885, c. 40, § 7, p. 218; R.S.1913, § 5600; C.S.1922, § 4917; C.S.1929, § 26-905; R.S.1943, § 23-1205; Laws 1969, c. 165, § 2, p. 742; Laws 2007, LB214, § 1; Laws 2009, LB35, § 3.
Operative date August 30, 2009.

23-1212 Terms, defined.

For purposes of sections 23-1212 to 23-1222, unless the context otherwise requires:

(1) County attorney shall mean the county attorney of a county in this state whether such position is elective or appointive and regardless of whether such position is full time or part time;

(2) Deputy county attorney shall mean an attorney employed by a county in this state for the purpose of assisting the county attorney in carrying out his or her responsibilities regardless of whether such position is full time or part time;

(3) Council shall mean the Nebraska County Attorney Standards Advisory Council;

(4) Attorney General shall mean the Nebraska Attorney General;

(5) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice; and

(6) Continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall mean that type of legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, which has application to and seeks to maintain and improve the skills of the county attorney and deputy county attorney in carrying out the responsibilities of his or her office or position.

Source: Laws 1980, LB 790, § 1; Laws 1990, LB 1246, § 1; Laws 2009, LB671, § 1.
Effective date August 30, 2009.

23-1213 Nebraska County Attorney Standards Advisory Council; created; members; qualifications; appointment; terms; vacancy.

(1)(a) There is hereby created the Nebraska County Attorney Standards Advisory Council which, except as provided in subdivision (b) of this subsection, shall consist of seven members, four of whom shall be either a county attorney or deputy county attorney, one member being a professor of law or professor of forensic science, and two members being county commissioners or supervisors. The members of such council shall be appointed by the Governor. Of the county attorneys or deputy county attorneys appointed to such council, one shall be from Douglas County, one shall be from Lancaster County, and the remaining two shall be appointed from the remainder of the state. Members of the council shall serve a term of four years, except that of the members first appointed one member shall serve a term of one year, two members shall serve a term of two years, two members shall serve a term of three years, and two members shall each serve a term of four years.

(b) On and after August 30, 2009, the council shall consist of eleven members with the addition of the following four new members: (i) Two members who shall be either county attorneys or deputy county attorneys from counties other than Douglas County or Lancaster County; (ii) one member who is a county sheriff or a chief of police; and (iii) one member who is a certified forensic pathologist. The new members shall serve terms of four years, except that of the new members first appointed two members shall serve terms of two years and two members shall serve terms of three years.

(2) A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appoint-

ment. The council shall select one of its members as chairperson. The Governor shall make the appointments under this section within ninety days of July 19, 1980.

(3) Members of the council shall have such membership terminated if they cease to hold the office of county attorney, deputy county attorney, county commissioner or supervisor, or county sheriff or chief of police. A member of the council may be removed from the council for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 1980, LB 790, § 2; Laws 2009, LB671, § 2.
Effective date August 30, 2009.

23-1213.01 Guidelines to promote uniform and quality death investigations for county coroners; contents.

The council shall, with respect to ensuring quality and uniform death investigation processes throughout the state, develop guidelines to promote uniform and quality death investigations for county coroners. Such guidelines may include guidance to the county coroner in:

(1) Determining the need for autopsies involving:

(a) Deaths of individuals nineteen years of age or older;

(b) Deaths of individuals under nineteen years of age;

(c) Sudden, unexplained infant deaths;

(d) Deaths while in custody;

(e) Deaths caused by motor vehicle collisions;

(f) Deaths by burning; and

(g) Suspicious deaths;

(2) The utilization of investigative tools and equipment;

(3) Entering the death scene;

(4) Documenting and evaluating the death scene;

(5) Documenting and evaluating the body;

(6) Establishing and recording decedent profile information; and

(7) Completing the death scene investigation.

Persons investigating infant deaths and young child deaths may also refer to the recommendations adopted by the Attorney General with respect to such investigations.

Source: Laws 2009, LB671, § 3.
Effective date August 30, 2009.

23-1213.02 Network of regional officials for death investigation support services.

The council shall also:

(1) Help establish a voluntary network of regional officials including, but not limited to, law enforcement, county coroners, and medical personnel to provide death investigation support services for any location in Nebraska;

(2) Help determine the membership of such networks; and

(3) Develop, design, and provide standardized forms in both hard copy and electronic copy for use in death investigations.

Source: Laws 2009, LB671, § 4.
Effective date August 30, 2009.

23-1213.03 Coroner or deputy coroner; training; continuing education.

Every person who is elected or appointed as a coroner or deputy coroner in or for the State of Nebraska shall satisfactorily complete initial death investigation training within one year after the date of election or appointment and thereafter annually complete continuing education as determined by the council.

Source: Laws 2009, LB671, § 5.
Effective date August 30, 2009.

23-1218 Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

The Nebraska Commission on Law Enforcement and Criminal Justice, after consultation with the council, shall:

(1) Establish curricula for the implementation of a mandatory continuing legal education program, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys;

(2) Administer all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys required under sections 23-1212 to 23-1222;

(3) Evaluate the effectiveness of programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required under sections 23-1212 to 23-1222;

(4) Certify the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, completed by a county attorney and deputy county attorney as required under sections 23-1212 to 23-1222 and maintain all records relating thereto;

(5) Report to the Attorney General the names of all county attorneys and deputy county attorneys who have failed to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under section 23-1217;

(6) Establish tuition and fees for all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under sections 23-1212 to 23-1222;

(7) Adopt and promulgate necessary rules and regulations for the effective delivery of all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys as required under sections 23-1212 to 23-1222;

(8) Do all things necessary to carry out the purpose of training county attorneys and deputy county attorneys as required by sections 23-1212 to 23-1222; and

(9) Receive and distribute appropriated funds to the Nebraska County Attorneys Association to develop, administer, and conduct continuing legal education seminars, prepare and publish trial manuals and other publications, and take any other measure that will enhance the investigation and prosecution of crime in this state.

Source: Laws 1980, LB 790, § 7; Laws 1990, LB 1246, § 4; Laws 2009, LB671, § 6.
Effective date August 30, 2009.

ARTICLE 17

SHERIFF

(b) MERIT SYSTEM

Section
23-1734. Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(b) MERIT SYSTEM

23-1734 Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(1)(a) Any deputy sheriff may be removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. Such order shall be filed with the sheriff's office merit commission, and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension with or without pay, or reduction, appeal to the commission from such order. The commission shall, within two weeks after the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and have counsel or other representation and a public hearing. The finding and decision of the commission shall be certified to the sheriff and shall forthwith be enforced and followed, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended with or without pay, or reduced in rank until such finding and decision of the commission is so certified to the sheriff.

(b) This subsection does not apply to a deputy sheriff during his or her probationary period.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental policy or procedure to the commission. The commission shall hear the grievance at the next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy sheriff became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel or other representative within seven calendar days after the date of the hearing or the submission of the written grievance.

Source: Laws 1969, c. 140, § 14, p. 646; Laws 2003, LB 222, § 11; Laws 2009, LB158, § 3.
Effective date August 30, 2009.

ARTICLE 23
COUNTY EMPLOYEES RETIREMENT

Section
23-2306. Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.
23-2308.01. Cash balance benefit; election; effect; administrative services agreements; authorized.
23-2315. Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.
23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.
23-2319. Termination of employment; termination benefit; vesting.
23-2321. Retirement system; employee; death before retirement; death benefit.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in

another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(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; Laws 2009, LB188, § 1.
Operative date July 1, 2009.

23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008,

the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008. A member employed and participating in the retirement system prior to January 1, 2003, who terminates employment on or after January 1, 2003, and returns to employment prior to having a five-year break in service shall participate in the cash balance benefit as set forth in this section.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 23-2319.01 shall not be used to pay the administrative costs incurred pursuant to this subsection.

Source: Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2.
Operative date July 1, 2009.

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 296, § 1; Laws 1987, LB 60, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3.
Operative date July 1, 2009.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire

amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year

following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4. Operative date July 1, 2009.

23-2319 Termination of employment; termination benefit; vesting.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month

at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 47, § 4; Laws 1975, LB 32, § 3; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB 1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5. Operative date July 1, 2009.

23-2321 Retirement system; employee; death before retirement; death benefit.

In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Source: Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6; Laws 2009, LB188, § 6.
Operative date July 1, 2009.

ARTICLE 32
COUNTY ASSESSOR

Section
23-3202. County assessor or deputy; county assessor certificate; required; exception.

23-3202 County assessor or deputy; county assessor certificate; required; exception.

No person shall be eligible to file for, be appointed to, or hold the office of county assessor or serve as deputy assessor in any county of this state unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 623, § 3, p. 2521; Laws 1983, LB 245, § 2; R.S.1943, (1986), § 77-423; Laws 1990, LB 821, § 17; Laws 1999, LB 194, § 3; Laws 2000, LB 968, § 14; Laws 2006, LB 808, § 22; Laws 2009, LB121, § 3.
Operative date July 1, 2013.

CHAPTER 24
COURTS

Article.
2. Supreme Court.
   (a) Organization. 24-201.01.
3. District Court.
   (a) Organization. 24-301.02.
   (c) Clerk. 24-337.04.
5. County Court.
   (a) Organization. 24-517.
7. Judges, General Provisions.
   (a) Judges Retirement. 24-703.
8. Selection and Retention of Judges.
   (c) Term of Office. 24-819.

ARTICLE 2
SUPREME COURT

(a) ORGANIZATION

Section
24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2008, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred thirty-five thousand eight hundred eighty dollars and sixty cents. On July 1, 2009, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred thirty-nine thousand two hundred seventy-seven dollars and sixty-one cents. On July 1, 2010, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred forty-two thousand seven hundred fifty-nine dollars and fifty-five cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws 1963, c. 534, § 1, p. 1676; Laws 1963, c. 127, § 1, p. 480; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350,

§ 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1.
Operative date May 20, 2009.

ARTICLE 3
DISTRICT COURT

(a) ORGANIZATION

Section
24-301.02. District court judicial districts; described; number of judges.

(c) CLERK

24-337.04. Clerk of district court; residency.

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Clay, Nuckolls, Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, and Webster;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be sixteen judges of the district court. In the third district, until June 30, 2011, there shall be seven judges of the district court and, beginning July 1, 2011, there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be

three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 24, § 1, p. 189; Laws 1965, c. 23, § 1, p. 186; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4.
Operative date May 30, 2009.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

(c) CLERK

24-337.04 Clerk of district court; residency.

A clerk of the district court elected after 2008 need not be a resident of the county when he or she files for election as clerk of the district court, but a clerk of the district court shall reside in a county for which he or she holds office.

Source: Laws 2009, LB7, § 1.
Effective date August 30, 2009.

ARTICLE 5

COUNTY COURT

(a) ORGANIZATION

Section
24-517. Jurisdiction.

(a) ORGANIZATION

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate

owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(10) Exclusive original jurisdiction in juvenile matters in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1;

Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5.
Operative date May 30, 2009.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 7
JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section
24-703. Judges; contributions; payment; funding of system; late fees.

(a) JUDGES RETIREMENT

24-703 Judges; contributions; payment; funding of system; late fees.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, and until July 1, 2014, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of five dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. Beginning on July 1, 2009, and until July 1, 2014, such fee shall be six dollars. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is

uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. Prior to July 1, 2006, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered

fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compensation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 682, § 2; Laws 1992, LB 672, § 31; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2. Operative date July 1, 2009.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(c) TERM OF OFFICE

Section
24-819. Judges; full term; commencement; end.

(c) TERM OF OFFICE

24-819 Judges; full term; commencement; end.

The full term of office of each judge shall commence: (1) On the first Thursday after the first Tuesday in January next succeeding the election

referred to in sections 24-813 to 24-818, or (2) if appointed pursuant to Article V of the Constitution of Nebraska, on the date of his or her appointment, as the case may be. For purposes of sections 24-817 and 24-818, the end of the term of office shall be the first Thursday after the first Tuesday in January next succeeding the retention election required by section 24-814.

Source: Laws 1969, c. 178, § 8, p. 768; Laws 2009, LB343, § 1.
Effective date August 30, 2009.

CHAPTER 25
COURTS; CIVIL PROCEDURE

Article.
5. Commencement of Actions; Process.
(b) Service and Return of Summons. 25-505.01 to 25-507.01.
11. Trial.
(g) New Trial. 25-1144.
16. Jury. 25-1628
17. Costs. 25-1708.
18. Expenses and Attorney's Fees. 25-1801.
22. General Provisions.
(f) Settlements. 25-2240.
24. Interpreters. 25-2405.
27. Provisions Applicable to County Courts.
(d) Judgments. 25-2721.
29. Dispute Resolution.
(b) Settlement Escrow. 25-2922 to 25-2929. Repealed.
30. Civil Legal Services for Low-Income Persons.
(b) Civil Legal Services Program. 25-3007, 25-3008.

ARTICLE 5
COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section
25-505.01. Service of summons; methods.
25-506.01. Process; by whom served.
25-507.01. Summons; proof of service; return date.

(b) SERVICE AND RETURN OF SUMMONS

25-505.01 Service of summons; methods.

(1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:

(a) Personal service which shall be made by leaving the summons with the individual to be served;

(b) Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein;

(c) Certified mail service which shall be made by (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and (ii) filing with the court proof of service with the signed receipt attached; or

(d) By depositing with a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, delivery receipt includes an electronic or facsimile receipt.

(2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.

Source: Laws 1983, LB 447, § 22; Laws 1984, LB 845, § 21; Laws 2009, LB35, § 6.
Operative date August 30, 2009.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-506.01 Process; by whom served.

(1) Unless the plaintiff has elected certified mail service, the summons shall be served by the sheriff of the county where service is made, by a person authorized by section 25-507 or otherwise authorized by law, or by a person, corporation, partnership, or limited liability company not a party to the action specially appointed by the court for that purpose.

(2) Certified mail service shall be made by plaintiff or plaintiff's attorney.

Source: Laws 1983, LB 447, § 23; Laws 1994, LB 1224, § 36; Laws 1999, LB 319, § 1; Laws 2009, LB35, § 7.
Operative date August 30, 2009.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-507.01 Summons; proof of service; return date.

(1) Within twenty days after the date of issue, the person serving the summons, other than by certified mail service, shall make proof of service to the court stating the time, place, including the address if applicable, name of the person with whom the summons was left, and method of service, or return the unserved summons to the court with a statement of the reason for the failure to serve.

(2) When service is by certified mail service, the plaintiff or plaintiff's attorney shall file proof of service within ten days after return of the signed receipt.

(3) Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1983, LB 447, § 24; Laws 2009, LB35, § 8.
Operative date August 30, 2009.

Cross References

Workers' compensation cases, manner and time of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

ARTICLE 11
TRIAL

(g) NEW TRIAL

Section
25-1144. New trial; motion; form.

(g) NEW TRIAL

25-1144 New trial; motion; form.

The application for a new trial shall be by motion, upon written grounds, filed at the time of making the motion. It shall be sufficient, however, in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions (2), (3), and (7) of section 25-1142 shall be sustained by affidavits showing their truth and may be controverted by affidavits.

Source: R.S.1867, Code § 317, p. 477; R.S.1913, § 7885; C.S.1922, § 8827; C.S.1929, § 20-1144; R.S.1943, § 25-1144; Laws 2009, LB35, § 9.
Operative date August 30, 2009.

ARTICLE 16
JURY

Section
25-1628. Jury list; how made up.

25-1628 Jury list; how made up.

(1) At least once each calendar year, the officer having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, and addresses of all registered electors nineteen years of age or older in the county. The Department of Motor Vehicles shall make available to each jury commissioner each December a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, and addresses of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. The jury commissioner may request such a list of licensed motor vehicle operators and state identification card holders from the county treasurer if the county treasurer has an automated procedure for developing such lists. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves.

(2) Upon receipt of both lists described in subsection (1) of this section, the jury commissioner shall combine the separate lists and attempt to reduce duplication to the best of his or her ability to produce a master list. In counties having a population of three thousand inhabitants or more, the jury commissioner shall produce a master list at least once each calendar year. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a master list at least once every two calendar years.

(3) The proposed juror list shall be derived by selecting from the master list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the proposed juror list has been made in accordance with sections 25-1625 to 25-1637.

(4) Any duplication of names on a master list shall not be grounds for quashing any panel pursuant to section 25-1637 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337; Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB

111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10.
Operative date August 30, 2009.

ARTICLE 17
COSTS

Section
25-1708. Plaintiff's costs; when allowed.

25-1708 Plaintiff's costs; when allowed.

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, except as waived or released in writing by the plaintiff, upon a voluntary payment to the plaintiff after the action is filed but before judgment, or upon a judgment in favor of the plaintiff, in actions for the recovery of money only or for the recovery of specific real or personal property.

Source: R.S.1867, Code § 620, p. 504; R.S.1913, § 8167; C.S.1922, § 9118; C.S.1929, § 20-1708; R.S.1943, § 25-1708; Laws 2009, LB35, § 11.
Operative date August 30, 2009.

Cross References

Agreement to pay costs as part of settlement, authorized, see section 25-2240.

ARTICLE 18
EXPENSES AND ATTORNEY'S FEES

Section
25-1801. Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

25-1801 Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

Any person, partnership, limited liability company, association, or corporation in this state having a claim which amounts to four thousand dollars or less against any person, partnership, limited liability company, association, or corporation doing business in this state for (1) services rendered, (2) labor done, (3) material furnished, (4) overcharges made and collected, (5) lost or damaged personal property, (6) damage resulting from delay in transmission or transportation, (7) livestock killed or injured in transit, or (8) charges covering articles and service affecting the life and well-being of the debtor which are adjudged by the court to be necessaries of life may present the same to such person, partnership, limited liability company, association, or corporation, or to any agent thereof, for payment in any county where suit may be instituted for the collection of the same. If, at the expiration of ninety days after the presentation of such claim, the same has not been paid or satisfied, he, she, or it may institute suit thereon in the proper court. If payment is made to the plaintiff by or on behalf of the defendant after the filing of the suit but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of suit whether by voluntary payment or judgment. If he, she, or it establishes the claim and secures judgment thereon, he, she, or it shall be entitled to recover the full amount of

such judgment and all costs of suit thereon, and, in addition thereto, interest on the amount of the claim at the rate of six percent per annum from the date of presentation thereof, and, if he, she, or it has an attorney employed in the case, an amount for attorney's fees as provided in this section. If the cause is taken to an appellate court and plaintiff shall recover judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the party in interest fails to recover a judgment in excess of the amount that may have been tendered by any person, partnership, limited liability company, association, or corporation liable under this section, then such party in interest shall not recover the attorney's fees provided by this section. Attorney's fees shall be assessed by the court in a reasonable amount but shall in no event be less than ten dollars when the judgment is fifty dollars or less and when the judgment is over fifty dollars up to four thousand dollars the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13.
Operative date August 30, 2009.

Cross References

For interest on unsettled accounts, see section 45-104.

ARTICLE 22
GENERAL PROVISIONS

(f) SETTLEMENTS

Section
25-2240. Civil action; settlement; payment of costs.

(f) SETTLEMENTS

25-2240 Civil action; settlement; payment of costs.

The parties to a civil action may, as part of a settlement of the action, agree to the payment of costs of the action.

Source: Laws 2009, LB35, § 12.
Operative date August 30, 2009.

ARTICLE 24
INTERPRETERS

Section
25-2405. Interpreters; oath.

25-2405 Interpreters; oath.

Every interpreter, except those certified under the rules of the Supreme Court and who have taken the prescribed oath of office, appointed pursuant to sections 25-2401 to 25-2407, before entering upon his or her duties as such, shall take an oath that he or she will, to the best of his or her skill and

judgment, make a true interpretation to such person unable to communicate the English language of all the proceedings in a language which such person understands and that he or she will, in the English language, repeat the statements of such person to the court, jury, or officials before whom such proceeding takes place.

Source: Laws 1973, LB 116, § 5; Laws 1987, LB 376, § 15; Laws 2002, LB 22, § 11; Laws 2009, LB35, § 14.
Operative date August 30, 2009.

ARTICLE 27

PROVISIONS APPLICABLE TO COUNTY COURTS

(d) JUDGMENTS

Section
25-2721. Judgment; execution; lien on real estate; conditions.

(d) JUDGMENTS

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any county of this state. When the transcript is so filed and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered upon such judgment record, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15.
Operative date August 30, 2009.

ARTICLE 29

DISPUTE RESOLUTION

(b) SETTLEMENT ESCROW

Section
25-2922. Repealed. Laws 2009, LB 1, § 1.
25-2923. Repealed. Laws 2009, LB 1, § 1.
25-2924. Repealed. Laws 2009, LB 1, § 1.
25-2925. Repealed. Laws 2009, LB 1, § 1.
25-2926. Repealed. Laws 2009, LB 1, § 1.

Section
25-2927. Repealed. Laws 2009, LB 1, § 1.
25-2928. Repealed. Laws 2009, LB 1, § 1.
25-2929. Repealed. Laws 2009, LB 1, § 1.

(b) SETTLEMENT ESCROW

25-2922 Repealed. Laws 2009, LB 1, § 1.

25-2923 Repealed. Laws 2009, LB 1, § 1.

25-2924 Repealed. Laws 2009, LB 1, § 1.

25-2925 Repealed. Laws 2009, LB 1, § 1.

25-2926 Repealed. Laws 2009, LB 1, § 1.

25-2927 Repealed. Laws 2009, LB 1, § 1.

25-2928 Repealed. Laws 2009, LB 1, § 1.

25-2929 Repealed. Laws 2009, LB 1, § 1.

ARTICLE 30

CIVIL LEGAL SERVICES FOR LOW-INCOME PERSONS

(b) CIVIL LEGAL SERVICES PROGRAM

Section
25-3007. Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.
25-3008. Grant recipients; requirements; application; audit.

(b) CIVIL LEGAL SERVICES PROGRAM

25-3007 Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.

The Civil Legal Services Program is created. Appropriations to the program and money in the Civil Legal Services Fund shall be used to provide grants for civil legal services to eligible low-income persons. The Commission on Public Advocacy shall distribute grants pursuant to section 25-3008.

Source: Laws 2006, LB 746, § 3; Laws 2009, LB35, § 16.
Operative date August 30, 2009.

25-3008 Grant recipients; requirements; application; audit.

(1) The Commission on Public Advocacy shall establish guidelines for submission of applications for grants to provide civil legal services to eligible low-income persons. To be eligible for a grant under this section, a civil legal services provider shall:

(a) Be a nonprofit organization chartered in Nebraska;

(b) Employ or contract with attorneys admitted to practice before the Nebraska Supreme Court and the United States District Courts;

(c) Have offices located throughout the state;

(d) Have as its principal purpose and mission the delivery of civil legal services to eligible low-income persons who are residents of Nebraska;

(e) Distribute its resources equitably throughout the state;

(f) Be a recipient of financial assistance for the delivery of civil legal services from the Legal Services Corporation established by the federal Legal Services Corporation Act, 42 U.S.C. 2996 et seq.; and

(g) Certify that any grant funds received pursuant to this section will be used to supplement any existing funds used by the applicant and that such funds will not replace other funds appropriated or awarded by a state agency to provide civil legal services to any eligible low-income person.

(2) A civil legal services provider seeking a grant under this section shall file an application with the commission on forms provided by the commission. The application shall include a place for the provider to certify to the commission that it will provide free civil legal services to eligible low-income persons upon receipt of a grant under this section.

(3) The commission shall review the applications and determine which civil legal services providers shall receive grants under this section and the amount of the grants. Grant recipients shall use the grant funds to provide free civil legal services to eligible low-income persons.

(4) An independent certified public accountant shall annually audit the books and accounts of each grant recipient. The grant recipients shall provide the results of such audit to the commission.

Source: Laws 2006, LB 746, § 4; Laws 2009, LB35, § 17.
Operative date August 30, 2009.

CHAPTER 27
COURTS; RULES OF EVIDENCE

Article.
4. Relevancy and Its Limits. 27-404 to 27-415.
11. Miscellaneous Rules. 27-1103.
12. Inadmissibility of Certain Conduct as Evidence. 27-1201.
13. Evidence of Visual Depiction of Sexually Explicit Conduct. 27-1301.

ARTICLE 4
RELEVANCY AND ITS LIMITS

Section
27-404. Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.
27-412. Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.
27-413. Offense of sexual assault, defined.
27-414. Criminal use; evidence of similar crimes in sexual assault cases.
27-415. Civil case; evidence of crimes in sexual assault cases.

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-319 to 28-322.04, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7.
Operative date January 1, 2010.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

Source: Laws 2009, LB97, § 3.
Operative date January 1, 2010.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communication device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, and sexual abuse of a protected individual under section 28-322.04.

Source: Laws 2009, LB97, § 4.
Operative date January 1, 2010.

27-414 Criminal use; evidence of similar crimes in sexual assault cases.

(1) In a criminal case in which the accused is accused of an offense of sexual assault, evidence of the accused's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the accused committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) In a case in which the prosecution intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of the accused's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 5.
Operative date January 1, 2010.

27-415 Civil case; evidence of crimes in sexual assault cases.

(1) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault, evidence of that party's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the party committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) A party who intends to offer evidence under this section shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of a party's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 6.
Operative date January 1, 2010.

ARTICLE 11

MISCELLANEOUS RULES

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules and sections 27-412 to 27-415 may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8.
Operative date January 1, 2010.

ARTICLE 12

INADMISSIBILITY OF CERTAIN CONDUCT AS EVIDENCE

Section
27-1201. Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

27-1201 Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

(1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault which is otherwise admissible and is part of or in addition to any such communication shall be admissible.

(2) For purposes of this section, unless the context otherwise requires:

(a) Health care provider means any person licensed or certified by the State of Nebraska to deliver health care under the Uniform Credentialing Act and any health care facility licensed under the Health Care Facility Licensure Act.

Health care provider includes any professional corporation or other professional entity comprised of such health care providers;

(b) Relative means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, stepbrother, stepsister, half brother, half sister, or spouse's parents. Relative includes persons related to the patient through adoptive relationships. Relative also includes any person who has a family-type relationship with the patient;

(c) Representative means a legal guardian, attorney, person designated to make health care decisions on behalf of a patient under a power of attorney, or any person recognized in law or custom as a patient's agent; and

(d) Unanticipated outcome means the outcome of a medical treatment or procedure that differs from the expected result.

Source: Laws 2007, LB373, § 1; Laws 2009, LB35, § 18.
Operative date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

ARTICLE 13

EVIDENCE OF VISUAL DEPICTION OF SEXUALLY EXPLICIT CONDUCT

Section
27-1301. Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

27-1301 Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

(1) In any judicial or administrative proceeding, any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, shall remain constantly and continuously in the care, custody, and control of law enforcement, the prosecuting attorney, or the court having properly received it into evidence, except as provided in subsection (3) of this section.

(2) All courts and administrative agencies shall unequivocally deny any request by the defendant, his or her attorney, or any other person, agency, or organization, regardless of whether such defendant, attorney, or other person, agency, or organization is a party in interest or not, to acquire possession of, copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, so long as the state makes the property or material reasonably available to the defendant in a criminal proceeding. Nothing in this section shall be deemed to prohibit the review of the proscribed materials or property by a federal court when considering a habeas corpus claim.

(3)(a) For purposes of this section, property or material are deemed to be reasonably available to a defendant if the state provides ample opportunity for inspection, viewing, examination, and analysis of the property or material, at a

law enforcement or state-operated facility, to the defendant, his or her attorney, and any individual the defendant seeks to use for the purpose of furnishing expert testimony.

(b) Notwithstanding the provisions of this subsection, a court may order a copy of the property or material to be delivered to a person identified as a defense expert for the purpose of evaluating the evidence, subject to the same restrictions placed upon law enforcement. The defense expert shall return all copies and materials to law enforcement upon completion of the evaluation.

(4) On or before July 1, 2009, the Supreme Court shall adopt and promulgate rules and regulations regarding the proper control, care, custody, transfer, and disposition of property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, that has been received into evidence at any judicial or administrative proceeding. Among the issues addressed by these rules and regulations, the Supreme Court should devise procedures regarding the preparation and delivery of bills of exception containing evidence as described in this section, as well as procedures for storing, accessing, and disposing of such bills of exception after preparation and receipt.

Source: Laws 2009, LB97, § 22.
Operative date May 21, 2009.

CHAPTER 28
CRIMES AND PUNISHMENTS

Article.
1. Provisions Applicable to Offenses Generally.
   (a) General Provisions. 28-101.
   (b) Discrimination-Based Offenses. 28-111.
3. Offenses against the Person.
   (a) General Provisions. 28-308 to 28-327.04.
4. Drugs and Narcotics. 28-401 to 28-456.01.
5. Offenses against Property. 28-518 to 28-524.
6. Offenses Involving Fraud. 28-603 to 28-640.
7. Offenses Involving the Family Relation. 28-718, 28-720.
8. Offenses Relating to Morals. 28-813.01.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-929, 28-930.
10. Offenses against Animals. 28-1008 to 28-1020.
12. Offenses against Public Health and Safety. 28-1201 to 28-1212.04.
13. Miscellaneous Offenses.
   (n) Shooting from Highway or Bridge. 28-1335.
   (r) Unlawful Membership Recruitment. 28-1351.
   (s) Public Protection Act. 28-1352 to 28-1356.
14. Noncode Provisions.
   (k) Child Pornography Prevention Act. 28-1463.02 to 28-1463.05.

ARTICLE 1
PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section
28-101. Code, how cited.

(b) DISCRIMINATION-BASED OFFENSES

28-111. Enhanced penalty; enumerated offenses.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1356 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 969, § 1; Laws 1986, LB 956, § 12; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 1018, § 1; Laws 1990, LB 571, § 2; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB 1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB

6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB63, section 2, with LB97, section 9, and LB155, section 1, to reflect all amendments.

Note: Changes made by LB97 became operative May 21, 2009. Changes made by LB63 became effective May 28, 2009. Changes made by LB155 became effective August 30, 2009.

(b) DISCRIMINATION-BASED OFFENSES

28-111 Enhanced penalty; enumerated offenses.

Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; unauthorized application of graffiti, section 28-524; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Source: Laws 1997, LB 90, § 3; Laws 2006, LB 1199, § 2; Laws 2009, LB63, § 3.
Effective date May 28, 2009.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section
28-308. Assault in the first degree; penalty.
28-309. Assault in the second degree; penalty.
28-311. Criminal child enticement; attempt; penalties.
28-318. Terms, defined.
28-319.01. Sexual assault of a child; first degree; penalty.
28-320.02. Sexual assault; use of electronic communication device; prohibited acts; penalties.
28-321. Repealed. Laws 2009, LB 97, § 36.
28-322.05. Unlawful use of the Internet by a prohibited sex offender; penalties.

Section
28-326. Terms, defined.
28-327. Abortion; voluntary and informed consent required; exception.
28-327.01. Department of Health and Human Services; printed materials; duties; availability.
28-327.03. Civil liability; limitation.
28-327.04. Civil cause of action; authorized; evidence of professional negligence; attorney's fee.

(a) GENERAL PROVISIONS

28-308 Assault in the first degree; penalty.

(1) A person commits the offense of assault in the first degree if he or she intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree shall be a Class II felony.

Source: Laws 1977, LB 38, § 23; Laws 2009, LB63, § 4.
Effective date May 28, 2009.

28-309 Assault in the second degree; penalty.

(1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) While during confinement or in legal custody of the Department of Correctional Services or in any county jail, unlawfully strikes or wounds another.

(2) Assault in the second degree shall be a Class III felony.

Source: Laws 1977, LB 38, § 24; Laws 1982, LB 347, § 7; Laws 1997, LB 364, § 4; Laws 2009, LB63, § 5.
Effective date May 28, 2009.

28-311 Criminal child enticement; attempt; penalties.

(1) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class III felony.

Source: Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB97, § 10.
Operative date May 21, 2009.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.04, unless the context otherwise requires:

(1) Actor means a person accused of sexual assault;

(2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;

(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;

(7) Victim means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11.
Operative date January 1, 2010.

28-319.01 Sexual assault of a child; first degree; penalty.

(1) A person commits sexual assault of a child in the first degree:

(a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or

(b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

(4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 2006, LB 1199, § 6; Laws 2009, LB97, § 12.
Operative date May 21, 2009.

28-320.02 Sexual assault; use of electronic communication device; prohibited acts; penalties.

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.

(2) A person who violates this section is guilty of a Class ID felony. If a person who violates this section has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320, the person is guilty of a Class IC felony.

Source: Laws 2004, LB 943, § 3; Laws 2006, LB 1199, § 8; Laws 2009, LB97, § 13.
Operative date May 21, 2009.

28-321 Repealed. Laws 2009, LB 97, § 36.
(Operative date January 1, 2010.)

28-322.05 Unlawful use of the Internet by a prohibited sex offender; penalties.

(1) Any person required to register under the Sex Offender Registration Act who is required to register because of a conviction for one or more of the following offenses, including any substantially equivalent offense committed in another state, territory, commonwealth, or other jurisdiction of the United States, and who knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service, commits the offense of unlawful use of the Internet by a prohibited sex offender:

(a) Kidnapping of a minor pursuant to section 28-313;

(b) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(c) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(d) Incest of a minor pursuant to section 28-703;

(e) Pandering of a minor pursuant to section 28-802;

(f) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(g) Possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(h) Criminal child enticement pursuant to section 28-311;

(i) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(j) Enticement by electronic communication device pursuant to section 28-833; or

(k) An attempt or conspiracy to commit an offense listed in subdivisions (1)(a) through (1)(j) of this section.

(2) Unlawful use of the Internet by a prohibited sex offender is a Class I misdemeanor for a first offense. Any second or subsequent conviction under this section is a Class IIIA felony.

Source: Laws 2009, LB97, § 14; Laws 2009, LB285, § 1.

Note: LB97 became operative May 21, 2009. Changes made by LB285 became operative January 1, 2010.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;

(3) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;

(4) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(5) Conception means the fecundation of the ovum by the spermatozoa;

(6) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means;

(7) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(8) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;

(9) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of

performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

(10) Woman means any female human being whether or not she has reached the age of majority; and

(11) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819, § 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term; and

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (4) of this section. The physician or his or her agent shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term; and

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity.

(2) The materials shall be printed in a typeface large enough to be clearly legible.

(3) The materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.03 Civil liability; limitation.

No civil liability for failure to comply with subdivision (2)(d) of section 28-327 or that portion of subdivision (4) of such section requiring a written certification that the woman has been informed of her right to review the information referred to in subdivision (2)(d) of such section may be imposed unless the Department of Health and Human Services has published and made available the printed materials at the time the physician or his or her agent is required to inform the woman of her right to review them.

Source: Laws 1993, LB 110, § 5; Laws 1996, LB 1044, § 62; Laws 2009, LB675, § 4.
Effective date August 30, 2009.

28-327.04 Civil cause of action; authorized; evidence of professional negligence; attorney's fee.

Any person upon whom an abortion has been performed or attempted in violation of section 28-327 or the parent or guardian of a minor upon whom an abortion has been performed or attempted in violation of such section shall have a right to maintain a civil cause of action against the person who performed the abortion or attempted to perform the abortion. A violation of such section shall be prima facie evidence of professional negligence. The written certification prescribed by subdivision (4) of section 28-327 signed by the person upon whom an abortion has been performed or attempted shall constitute and create a rebuttable presumption of full compliance with all provisions of section 28-327 in favor of the physician who performed or attempted to perform the abortion, the referring physician, or the agent of either physician. The written certification shall be admissible as evidence in the cause of action for professional negligence or in any criminal action. If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

Source: Laws 1993, LB 110, § 6; Laws 2009, LB675, § 5.
Effective date August 30, 2009.

ARTICLE 4

DRUGS AND NARCOTICS

Section
28-401. Terms, defined.
28-405. Controlled substances; schedules; enumerated.

Section
28-407. Registration required; exceptions.
28-414. Controlled substance; prescription; transfer; destruction; requirements.
28-448. Repealed. Laws 2009, LB 151, § 5.
28-454. Repealed. Laws 2009, LB 151, § 5.
28-456. Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.
28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a

component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the

stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2009, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature shall have the definition found in section 86-621;

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission; and

(41) Long-term care facility shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 537, § 1; Laws 1988, LB 273, § 3; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Difenoxin;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Propiram;

(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenyl-propanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such

salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) Diethyltryptamine. Trade and other names shall include, but are not limited to: N,N-Diethyltryptamine; and DET;

(3) Dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT;

(4) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(6) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(7) 5-methoxy-N-N, dimethyltryptamine;

(8) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(9) Lysergic acid diethylamide;

(10) Marijuana;

(11) Mescaline;

(12) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(13) Psilocybin;

(14) Psilocyn;

(15) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(16) 3,4-methylenedioxy amphetamine;

(17) 5-methoxy-3,4-methylenedioxy-amphetamine;

(18) 3,4,5-trimethoxy amphetamine;

(19) N-ethyl-3-piperidyl benzilate;

(20) N-methyl-3-piperidyl benzilate;

(21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-alpha-methylphenethylamine; and 2,5-DMA;

(23) Hashish or concentrated cannabis;

(24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers;

(28) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(32) Alpha-methyltryptamine, which is also known as AMT;

(33) 5-Methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DIPT; and

(34) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine; and

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

(xii) Metopon;

(xiii) Morphine;

(xiv) Oxycodone;

(xv) Oxymorphone;

(xvi) Oripavine;

(xvii) Thebaine; and

(xviii) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Pethidine or meperidine;

(14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(17) Phenazocine;

(18) Piminodine;

(19) Racemethorphan;

(20) Racemorphan;

(21) Dihydrocodeine;

(22) Bulk Dextropropoxyphene in nondosage forms;

(23) Sufentanil;

(24) Alfentanil;

(25) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil; and

(27) Remifentanil.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers; and

(4) Methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(i) 1-phenylcyclohexylamine; or

(ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers

whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methyprylon;

(6) Sulfondiethylmethane;

(7) Sulfonethylmethane;

(8) Sulfonmethane;

(9) Nalorphine;

(10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;

(13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(viii) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on June 1, 2007, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) Boldenone;

(2) Chlorotestosterone (4-chlortestosterone);

(3) Clostebol;

(4) Dehydrochloromethyltestosterone;

(5) Dihydrotestosterone (4-dihydrotestosterone);

(6) Drostanolone;

(7) Ethylestrenol;

(8) Fluoxymesterone;

(9) Formebulone (formebolone);

(10) Mesterolone;

(11) Methandienone;

(12) Methandranone;

(13) Methandriol;

(14) Methandrostenolone;

(15) Methenolone;

(16) Methyltestosterone;

(17) Mibolerone;

(18) Nandrolone;

(19) Norethandrolone;

(20) Oxandrolone;

(21) Oxymesterone;

(22) Oxymetholone;

(23) Stanolone;

(24) Stanozolol;

(25) Testolactone;

(26) Testosterone;

(27) Trenbolone; and

(28) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meprobamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;
(16) Paraldehyde;
(17) Petrichloral;
(18) Phenobarbital;
(19) Prazepam;
(20) Alprazolam;
(21) Bromazepam;
(22) Camazepam;
(23) Clobazam;
(24) Clotiazepam;
(25) Cloxazolam;
(26) Delorazepam;
(27) Estazolam;
(28) Ethyl loflazepate;
(29) Fludiazepam;
(30) Flunitrazepam;
(31) Halazepam;
(32) Haloxazolam;
(33) Ketazolam;
(34) Loprazolam;
(35) Lorazepam;
(36) Lormetazepam;
(37) Medazepam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazolam;
(42) Pinazepam;
(43) Temazepam;
(44) Tetrazepam;
(45) Triazolam;
(46) Midazolam;
(47) Quazepam;
(48) Zolpidem;
(49) Dichloralphenazone; and
(50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of

the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;

(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Dextropropoxyphene in manufactured dosage forms; and

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of

identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets;

(ii) Bronkaid Dual Action Caplets; and

(iii) Pazo Hemorrhoidal Ointment.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB123, section 1, with LB151, section 1, to reflect all amendments.

Note: Changes made by LB151 became effective March 19, 2009. Changes made by LB123 became effective August 30, 2009.

28-407 Registration required; exceptions.

(1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Source: Laws 1977, LB 38, § 67; Laws 1994, LB 1210, § 4; Laws 1997, LB 307, § 5; Laws 1997, LB 550, § 2; Laws 1999, LB 828, § 1; Laws 2001, LB 398, § 5; Laws 2009, LB195, § 2.
Effective date August 30, 2009.

Cross References

Emergency Box Drug Act, see section 71-2410.

28-414 Controlled substance; prescription; transfer; destruction; requirements.

(1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription bearing the word ''emergency'' or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section, except for the prescribing practitioner's signature, and bearing the word ''emergency''.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words ''hospice patient'';

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, a facsimile of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words ''terminally ill'' or ''long-term care facility patient'' on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for

sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription. The facsimile of a written, signed prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two individuals credentialed under the Uniform Credentialing Act and designated by the pharmacy.

(iv) When the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes ''do not label'' or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001,

LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

28-448 Repealed. Laws 2009, LB 151, § 5.

28-454 Repealed. Laws 2009, LB 151, § 5.

28-456 Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.

(1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:

(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;

(c) Packaged as follows:

(i) Except for liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and

(ii) For liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base;

(d) Sold by a person, eighteen years of age or older, in the course of his or her employment to a customer, eighteen years of age or older, with the following restrictions:

(i) No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period;

(ii) No customer shall purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period; and

(iii) The customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; and

(e) Stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product.

(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority

to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.

Source: Laws 2001, LB 113, § 9; Laws 2005, LB 117, § 5; Laws 2007, LB218, § 1; Laws 2007, LB296, § 36; Laws 2009, LB151, § 2. Effective date March 19, 2009.

28-456.01 Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of an infraction as defined in section 29-431.

Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3. Effective date March 19, 2009.

ARTICLE 5
OFFENSES AGAINST PROPERTY

Section
28-518. Grading of theft offenses; aggregation allowed; when.
28-520. Criminal trespass, first degree; penalty.
28-521. Criminal trespass, second degree; penalty.
28-524. Graffiti; penalty.

28-518 Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class III felony when the value of the thing involved is over one thousand five hundred dollars.

(2) Theft constitutes a Class IV felony when the value of the thing involved is five hundred dollars or more, but not over one thousand five hundred dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than two hundred dollars, but less than five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is two hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 1977, LB 38, § 117; Laws 1978, LB 748, § 7; Laws 1982, LB 347, § 8; Laws 1992, LB 111, § 2; Laws 2009, LB155, § 7. Effective date August 30, 2009.

28-520 Criminal trespass, first degree; penalty.

(1) A person commits first degree criminal trespass if:

(a) He or she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so; or

(b) He or she enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of a person who has the right to give consent to be in or on the facility.

(2) First degree criminal trespass is a Class I misdemeanor.

(3) For purposes of this section, public power infrastructure facility means a power plant, an electrical station or substation, or any other facility which is used by a public power supplier as defined in section 70-2103 to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

Source: Laws 1977, LB 38, § 119; Laws 2009, LB238, § 1.
Effective date May 27, 2009.

28-521 Criminal trespass, second degree; penalty.

(1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in section 28-520.

(2) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (3) of this section.

(3) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person.

Source: Laws 1977, LB 38, § 120; Laws 2009, LB238, § 2.
Effective date May 27, 2009.

28-524 Graffiti; penalty.

(1) Any person who knowingly and intentionally applies graffiti of any type on any building, public or private, or any other tangible property owned by any person, firm, or corporation or any public entity or instrumentality, without the express permission of the owner or operator of the property, commits the offense of unauthorized application of graffiti.

(2) Unauthorized application of graffiti is a Class III misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to clean up, repair, or replace the damaged property, keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year, or order a combination of restitution and labor.

(4) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to undergo counseling.

(5) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the suspension of the defendant's motor vehicle operator's license for up to one year. A copy of an abstract of the court's conviction, including an adjudication of a juvenile, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(6) For purposes of this section, graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure. Graffiti does not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or an authorized agent for such owner or tenant.

Source: Laws 2009, LB63, § 6.
Effective date May 28, 2009.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section
28-603. Forgery, second degree; penalty; aggregation allowed; when.
28-604. Criminal possession of a forged instrument; penalty; aggregation allowed; when.
28-608. Transferred to section 28-638.
28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
28-611.01. Issuing a no-account check; penalty; aggregation allowed; when.
28-631. Fraudulent insurance act; penalties.
28-636. Criminal impersonation; identity theft; identity fraud; terms, defined.
28-637. Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.
28-638. Criminal impersonation; penalty; restitution.
28-639. Identity theft; penalty; restitution.
28-640. Identity fraud; penalty; restitution.

28-603 Forgery, second degree; penalty; aggregation allowed; when.

(1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class III felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is one thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, exceeds three hundred dollars but is less than one thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is three hundred dollars or less.

(5) For the purpose of determining the class of penalty for forgery in the second degree, the face values, or purported face values, or the amounts of any proceeds wrongfully procured or intended to be procured by the use of more than one such instrument, may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 125; Laws 2003, LB 17, § 7; Laws 2009, LB155, § 13.
Effective date August 30, 2009.

28-604 Criminal possession of a forged instrument; penalty; aggregation allowed; when.

(1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is one thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is more than three hundred dollars but less than one thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is three hundred dollars or less, is a Class II misdemeanor.

(6) For the purpose of determining the class of penalty for criminal possession of a forged instrument prohibited by section 28-603, the amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 126; Laws 2003, LB 17, § 8; Laws 2009, LB155, § 14.
Effective date August 30, 2009.

28-608 Transferred to section 28-638.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient

funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15.
Effective date August 30, 2009.

28-611.01 Issuing a no-account check; penalty; aggregation allowed; when.

(1) Whoever issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check, draft, assignment of funds, or order is issued, commits the offense of issuing a no-account check. Issuing a no-account check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under this section, any person so offending shall be guilty of:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more; and

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

Source: Laws 2009, LB155, § 16.
Effective date August 30, 2009.

28-631 Fraudulent insurance act; penalties.

(1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance;

(j) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(k) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;

(l) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(m) Willfully collects fees for purported membership in a discount medical plan organization but purposefully fails to provide the promised benefits.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g), (i), (j), (k), (l), and (m) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 10; Laws 1997, LB 272, § 1; Laws 2000, LB 930, § 1; Laws 2002, LB 547, § 1; Laws 2008, LB855, § 2; Laws 2009, LB208, § 1.
Effective date August 30, 2009.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.
Intergovernmental Risk Management Act, see section 44-4301.

28-636 Criminal impersonation; identity theft; identity fraud; terms, defined.

For purposes of sections 28-636 to 28-640:

(1) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;

(2) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's: (a) Name; (b) date of birth; (c) address; (d) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state; (e) social security number or visa work permit number; (f) public, private, or government employer, place of employment, or employment identification number; (g) maiden name of a person's mother; (h) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity; (i) number assigned to a person's depository account, savings account, or brokerage account; (j) personal identification number as defined in section 8-157.01; (k) electronic identification number, address, or routing code used to access financial information; (l) digital signature; (m) telecommunications identifying information or access device; (n) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and (o) other number or information which can be used to access a person's financial resources; and

(3) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to: (a) Obtain money, goods, services, or any other thing of value; or (b) initiate a transfer of funds other than a transfer originated solely by a paper instrument.

Source: Laws 2009, LB155, § 8.
Effective date August 30, 2009.

28-637 Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.

For purposes of sections 28-636 to 28-640:

(1) Notwithstanding any other provision of law, venue for the prosecution and trial of violations of sections 28-636 to 28-640 may be commenced and maintained in any county in which an element of the offense occurred, including the county where a victim resides; and

(2) If a person or entity reasonably believes that he, she, or it has been the victim of a violation of sections 28-636 to 28-640, the victim may contact a local law enforcement agency which has jurisdiction over the victim's residence, place of business, or registered address. Notwithstanding that jurisdiction may

lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and refer the complaint to a law enforcement agency in the appropriate jurisdiction.

Source: Laws 2009, LB155, § 9.
Effective date August 30, 2009.

28-638 Criminal impersonation; penalty; restitution.

(1) A person commits the crime of criminal impersonation if he or she:

(a) Pretends to be a representative of some person or organization and does an act in his or her fictitious capacity with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;

(b) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law;

(c) Knowingly provides false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

(d) Knowingly provides false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

(2)(a) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) Criminal impersonation, as described in subdivision (1)(c) of this section, is a Class IV felony. Any second conviction under this subdivision is a Class III felony, and any third or subsequent conviction under this subdivision is a Class II felony.

(f) Criminal impersonation, as described in subdivision (1)(d) of this section, is a Class II misdemeanor. Any second or subsequent conviction under this subdivision is a Class I misdemeanor.

(g) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 1977, LB 38, § 130; Laws 2002, LB 276, § 2; R.S.1943, (2008), § 28-608; Laws 2009, LB155, § 10.
Effective date August 30, 2009.

28-639 Identity theft; penalty; restitution.

(1) A person commits the crime of identity theft if he or she knowingly takes, purchases, manufactures, records, possesses, or uses any personal identifying information or entity identifying information of another person or entity without the consent of that other person or entity or creates personal identifying information for a fictional person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment or with the intent to gain a pecuniary benefit for himself, herself, or another.

(2) Identity theft is not:

(a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;

(c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or

(d) The investigative activities of law enforcement.

(3)(a) Identity theft is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Identity theft is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Identity theft is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Identity theft is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 11.
Effective date August 30, 2009.

28-640 Identity fraud; penalty; restitution.

(1) A person commits the crime of identity fraud if he or she without lawful authority:

(a) Makes, counterfeits, alters, or mutilates any personal identification document with the intent to deceive another; or

(b) Willfully and knowingly obtains, possesses, uses, sells or furnishes or attempts to obtain, possess, or furnish to another person for any purpose of deception a personal identification document.

(2)(a) Identity fraud is a Class I misdemeanor. Any second or subsequent conviction under this subdivision is a Class IV felony.

(b) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 12.
Effective date August 30, 2009.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section
28-718. Child protection cases; central register.
28-720. Cases; central register; classification.

28-718 Child protection cases; central register.

There shall be a central register of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720. The department may change records classified as inconclusive prior to August 30, 2009, to agency substantiated. The department shall give public notice of the changes made to this section and subsection (3) of section 28-720 by Laws 2009, LB 122, within thirty days after August 30, 2009, by having such notice published in a newspaper or newspapers of general circulation within the state.

Source: Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1.
Effective date August 30, 2009.

28-720 Cases; central register; classification.

All cases entered into the central register of child protection cases maintained pursuant to section 28-718 shall be classified as one of the following:

(1) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an

adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect;

(2) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or

(3) Agency substantiated, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of the evidence and based upon an investigation pursuant to section 28-713.

Source: Laws 1979, LB 505, § 8; Laws 2005, LB 116, § 11; Laws 2009, LB122, § 2.
Effective date August 30, 2009.

ARTICLE 8
OFFENSES RELATING TO MORALS

Section
28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(3) It shall be an affirmative defense to a charge made pursuant to this section that:

(a) The visual depiction portrays no person other than the defendant; or

(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15.
Operative date May 21, 2009.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section
28-929. Assault on an officer in the first degree; penalty.
28-930. Assault on an officer in the second degree; penalty.

28-929 Assault on an officer in the first degree; penalty.

(1) A person commits the offense of assault on an officer in the first degree if he or she intentionally or knowingly causes serious bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7.
Effective date May 28, 2009.

28-930 Assault on an officer in the second degree; penalty.

(1) A person commits the offense of assault on an officer in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties; or

(b) Recklessly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8.
Effective date May 28, 2009.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section
28-1008. Terms, defined.
28-1010. Indecency with an animal; penalty.
28-1013. Sections; exemptions.
28-1014. Local regulation; authorized.
28-1015. Ownership by child; applicability of penalties.
28-1016. Game and Parks Commission; Game Law; sections, how construed.
28-1017. Animal abandonment, cruel neglect, or cruel mistreatment; report required by certain employees; violation; penalty.
28-1020. Animal abandonment, cruel neglect, or cruel mistreatment; report required by animal health care professional; immunity from liability.

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. The term does not include an uncaptured wild creature;

(3) Bovine means a cow, an ox, or a bison;

(4) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(5) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(6) Equine means a horse, pony, donkey, mule, hinny, or llama;

(7) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(8) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(9) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(10) Police animal means a horse or dog owned or controlled by the State of Nebraska for the purpose of assisting a Nebraska state trooper in the performance of his or her official enforcement duties;

(11) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(12) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(13) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1.
Effective date August 30, 2009.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1010 Indecency with an animal; penalty.

A person commits indecency with an animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with an animal is a Class III misdemeanor.

Source: Laws 1977, LB 38, § 216; Laws 1978, LB 748, § 16; R.S.1943, (1989), § 28-1003; Laws 1990, LB 50, § 3; Laws 2009, LB97, § 16.
Operative date May 21, 2009.

28-1013 Sections; exemptions.

Sections 28-1008 to 28-1017 and 28-1019 shall not apply to:

(1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2003;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests;

(6) Humane killing of an animal by the owner or by his or her agent or a veterinarian upon the owner's request;

(7) Commonly accepted practices of animal husbandry with respect to farm animals and commercial livestock operations, including their transport from one location to another and nonnegligent actions taken by personnel or agents of the Nebraska Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;

(8) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture, or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;

(9) Killing of house or garden pests;

(10) Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts; and

(11) Commonly accepted animal training practices.

Source: Laws 1990, LB 50, § 6; Laws 1995, LB 283, § 4; Laws 2003, LB 273, § 6; Laws 2007, LB463, § 1127; Laws 2008, LB764, § 5; Laws 2008, LB1055, § 4; Laws 2009, LB494, § 2.
Effective date August 30, 2009.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

28-1014 Local regulation; authorized.

Any city, village, or county may adopt and promulgate rules, regulations, and ordinances which are not inconsistent with the provisions of sections 28-1008 to 28-1017, 28-1019, and 28-1020 for the protection of the public, public health, and animals within its jurisdiction.

Source: Laws 1990, LB 50, § 7; Laws 2003, LB 273, § 7; Laws 2008, LB764, § 8; Laws 2008, LB1055, § 5; Laws 2009, LB494, § 3. Effective date August 30, 2009.

28-1015 Ownership by child; applicability of penalties.

When an animal is owned by a minor child, the parent of such minor child with whom the child resides or legal guardian with whom the child resides shall be subject to the penalties provided under sections 28-1008 to 28-1017, 28-1019, and 28-1020 if the animal is abandoned or cruelly neglected.

Source: Laws 1990, LB 50, § 8; Laws 2003, LB 273, § 8; Laws 2008, LB764, § 9; Laws 2008, LB1055, § 6; Laws 2009, LB494, § 4. Effective date August 30, 2009.

28-1016 Game and Parks Commission; Game Law; sections, how construed.

Nothing in sections 28-1008 to 28-1017, 28-1019, and 28-1020 shall be construed as amending or changing the authority of the Game and Parks Commission as established in the Game Law or to prohibit any conduct authorized or permitted by such law.

Source: Laws 1990, LB 50, § 9; Laws 2003, LB 273, § 9; Laws 2008, LB764, § 10; Laws 2008, LB1055, § 7; Laws 2009, LB494, § 5. Effective date August 30, 2009.

Cross References

Game Law, see section 37-201.

28-1017 Animal abandonment, cruel neglect, or cruel mistreatment; report required by certain employees; violation; penalty.

(1) For purposes of this section:

(a) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed; and

(b) Employee means any employee of a governmental agency dealing with child or adult protective services, animal control, or animal abuse.

(2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.

(3) The report of an employee shall be made within two working days of acquiring the information concerning the animal by facsimile transmission of a

written report presented in the form described in subsection (6) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the animal owner or custodian, whether a business or individual;

(c) A description of the animal or animals involved, person or persons involved, and location of the animal or animals and the premises; and

(d) The date, time, and a description of the observation or incident which led the reporter to reasonably suspect animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of animal abandonment, cruel neglect, or cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

Source: Laws 2003, LB 273, § 1; Laws 2009, LB494, § 6.
Effective date August 30, 2009.

28-1020 Animal abandonment, cruel neglect, or cruel mistreatment; report required by animal health care professional; immunity from liability.

(1) Any animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the animal health care professional to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated, shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of an animal. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, an animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311.

Source: Laws 2009, LB494, § 7.
Effective date August 30, 2009.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section
28-1201. Terms, defined.
28-1202. Carrying concealed weapon; penalty; affirmative defense.
28-1204. Unlawful possession of a handgun; exceptions; penalty.
28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.
28-1204.03. Firearms and violence; legislative findings.
28-1204.04. Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.
28-1205. Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; penalty; separate and distinct offense; proof of possession.
28-1206. Possession of a deadly weapon by a prohibited person; penalty.
28-1207. Possession of a defaced firearm; penalty.
28-1208. Defacing a firearm; penalty.
28-1212.02. Unlawful discharge of firearm; penalty.
28-1212.03. Stolen firearm; prohibited acts; violation; penalty.
28-1212.04. Discharge of firearm in certain cities, villages, and counties; prohibited acts; penalty.

28-1201 Terms, defined.

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Juvenile means any person under the age of eighteen years;

(5) Knife means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as

defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Source: Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB63, section 9, with LB430, section 6, to reflect all amendments.

Note: Changes made by LB63 became effective May 28, 2009. Changes made by LB430 became effective August 30, 2009.

28-1202 Carrying concealed weapon; penalty; affirmative defense.

(1)(a) Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person, such as a handgun, a knife, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying a concealed weapon.

(b) It is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Source: Laws 1977, LB 38, § 234; Laws 1984, LB 1095, § 1; Laws 2006, LB 454, § 22; Laws 2009, LB63, § 10.
Effective date May 28, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204 Unlawful possession of a handgun; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a handgun commits the offense of unlawful possession of a handgun.

(2) This section does not apply to the issuance of handguns to members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of handguns for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a handgun is a Class I misdemeanor.

Source: Laws 1977, LB 38, § 236; Laws 1978, LB 748, § 18; Laws 2009, LB63, § 11.
Effective date May 28, 2009.

28-1204.01 Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section does not apply to the transfer of a firearm, other than a handgun, to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section applies to the transfer of a handgun except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class III felony.

Source: Laws 1994, LB 988, § 4; Laws 2009, LB63, § 12.
Effective date May 28, 2009.

28-1204.03 Firearms and violence; legislative findings.

The Legislature finds that:

(1) Increased violence at schools has become a national, state, and local problem;

(2) Increased violence and the threat of violence has a grave and detrimental impact on the educational process in Nebraska schools;

(3) Increased violence has caused fear and concern among not only the schools and students but the public at large;

(4) Firearms have contributed greatly to the increase of fear and concern among our citizens;

(5) Schools have a duty to protect their students and provide an environment which promotes and provides an education in a nonthreatening manner;

(6) An additional danger of firearms at schools is the risk of accidental discharge and harm to students and staff;

(7) Firearms are an immediate and inherently dangerous threat to the safety and well-being of an educational setting; and

(8) The ability to confiscate and remove firearms quickly from school grounds is a legitimate and necessary tool to protect students and the educational process.

Source: Laws 1994, LB 988, § 5; Laws 2009, LB430, § 7.
Effective date August 30, 2009.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (c) firearms which may lawfully be possessed by a member of a college or university rifle team, within the scope of such person's duties as a member of the team, (d) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (e) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, or (f) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the

firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB63, section 13, with LB430, section 8, to reflect all amendments.

Note: Changes made by LB63 became effective May 28, 2009. Changes made by LB430 became effective August 30, 2009.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1205 Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; penalty; separate and distinct offense; proof of possession.

(1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state commits the offense of use of a deadly weapon to commit a felony.

(b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class II felony.

(c) Use of a deadly weapon, which is a firearm, to commit a felony is a Class IC felony.

(2)(a) Any person who possesses a firearm, a knife, brass or iron knuckles, or a destructive device during the commission of any felony which may be prosecuted in a court of this state commits the offense of possession of a deadly weapon during the commission of a felony.

(b) Possession of a deadly weapon, other than a firearm, during the commission of a felony is a Class III felony.

(c) Possession of a deadly weapon, which is a firearm, during the commission of a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

(4) Possession of a deadly weapon may be proved through evidence demonstrating either actual or constructive possession of a firearm, a knife, brass or iron knuckles, or a destructive device during, immediately prior to, or immediately after the commission of a felony.

(5) For purposes of this section:

(a) Destructive device has the same meaning as in section 28-1213; and

(b) Use of a deadly weapon includes the discharge, employment, or visible display of any part of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony, regardless of whether such firearm, knife, brass or iron knuckles, deadly weapon, or destructive device was discharged, actively employed, or displayed.

Source: Laws 1977, LB 38, § 237; Laws 1995, LB 371, § 8; Laws 2009, LB63, § 14.
Effective date May 28, 2009.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1)(a) Any person who possesses a firearm, a knife, or brass or iron knuckles and who has previously been convicted of a felony, who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order, or (b) any person who possesses any firearm or brass or iron knuckles and who has been convicted within the past seven years of a misdemeanor crime of domestic violence, commits the offense of possession of a deadly weapon by a prohibited person.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4)(a)(i) For purposes of this section, misdemeanor crime of domestic violence means:

(A)(I) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(II) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(III) A crime that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

(B)(I) Assault in the third degree under section 28-310, stalking under subsection (1) of section 28-311.04, false imprisonment in the second degree under section 28-315, or first offense domestic assault in the third degree under subsection (1) of section 28-323 or any attempt or conspiracy to commit one of these offenses; and

(II) The crime is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether

or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(ii) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(A) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(B) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(I) The case was tried to a jury; or

(II) The person knowingly and intelligently waived the right to have the case tried to a jury.

(b) For purposes of this section, subject of a current and validly issued domestic violence protection order pertains to a current court order that was validly issued pursuant to section 28-311.09 or 42-924 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in another state, territory, possession, or tribe.

Source: Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15.
Effective date May 28, 2009.

28-1207 Possession of a defaced firearm; penalty.

(1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class III felony.

Source: Laws 1977, LB 38, § 239; Laws 2009, LB63, § 16.
Effective date May 28, 2009.

28-1208 Defacing a firearm; penalty.

(1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class III felony.

Source: Laws 1977, LB 38, § 240; Laws 2009, LB63, § 17.
Effective date May 28, 2009.

28-1212.02 Unlawful discharge of firearm; penalty.

Any person who unlawfully and intentionally discharges a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801 shall be guilty of a Class ID felony.

Source: Laws 1990, LB 1018, § 2; Laws 1995, LB 371, § 11; Laws 2009, LB63, § 18.
Effective date May 28, 2009.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class III felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19.
Effective date May 28, 2009.

28-1212.04 Discharge of firearm in certain cities, villages, and counties; prohibited acts; penalty.

Any person, within the territorial boundaries of any city, incorporated village, or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801, is guilty of a Class IC felony.

Source: Laws 2009, LB63, § 20.
Effective date May 28, 2009.

ARTICLE 13

MISCELLANEOUS OFFENSES

(n) SHOOTING FROM HIGHWAY OR BRIDGE

Section
28-1335. Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351. Unlawful membership recruitment into an organization or association; penalty.

(s) PUBLIC PROTECTION ACT

28-1352. Act, how cited.
28-1353. Act; how construed.
28-1354. Terms, defined.
28-1355. Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.
28-1356. Violation; penalty.

(n) SHOOTING FROM HIGHWAY OR BRIDGE

28-1335 Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

A person commits a Class III misdemeanor if such person discharges any firearm or weapon using any form of compressed gas as a propellant from any public highway, road, or bridge in this state, unless otherwise allowed by statute. Upon conviction, the mandatory minimum fine shall be one hundred dollars.

Source: Laws 1977, LB 38, § 319; Laws 2009, LB105, § 1.
Effective date August 30, 2009.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer using a motor vehicle under section 28-931.01;

(i) Theft by unlawful taking or disposition under section 28-511;

(j) Theft by receiving stolen property under section 28-517;

(k) Theft by deception under section 28-512;

(l) Theft by extortion under section 28-513;

(m) Kidnapping under section 28-313;

(n) Any forgery offense under sections 28-602 to 28-605;

(o) Criminal impersonation under section 28-638;

(p) Tampering with a publicly exhibited contest under section 28-614;

(q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;

(r) Pandering under section 28-802;

(s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;

(t) Tampering with a witness or an informant or jury tampering under section 28-919;

(u) Unauthorized application of graffiti under section 28-524;

(v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or

(w) Promoting gambling in the first degree under section 28-1102.

(2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21.
Effective date May 28, 2009.

(s) PUBLIC PROTECTION ACT

28-1352 Act, how cited.

Sections 28-1352 to 28-1356 shall be known and may be cited as the Public Protection Act.

Source: Laws 2009, LB155, § 2.
Effective date August 30, 2009.

28-1353 Act; how construed.

(1) The provisions of the Public Protection Act shall be liberally construed to effectuate its remedial purposes.

(2) Nothing in the act shall supersede any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in the act.

Source: Laws 2009, LB155, § 3.
Effective date August 30, 2009.

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial

transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer in the first degree under section 28-929; assault on an officer in the second degree under section 28-930; assault on an officer in the third degree under section 28-931; and assault on an officer using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a revolver under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony under section 28-1205; possession of a deadly weapon by a felon or a fugitive from justice under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; human trafficking or forced labor or services under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4.
Effective date August 30, 2009.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.
Computer Crimes Act, see section 28-1341.
Nebraska Revenue Act of 1967, see section 77-2701.
Securities Act of Nebraska, see section 8-1123.

28-1355 Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.

(1) It shall be unlawful for any person who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his or her immediate family, and his or her or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Source: Laws 2009, LB155, § 5.
Effective date August 30, 2009.

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is

based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6.
Effective date August 30, 2009.

ARTICLE 14
NONCODE PROVISIONS

(k) CHILD PORNOGRAPHY PREVENTION ACT

Section
28-1463.02. Terms, defined.
28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.
28-1463.04. Violation; penalty.
28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.02 Terms, defined.

As used in the Child Pornography Prevention Act, unless the context otherwise requires:

(1) Child, in the case of a participant, means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years;

(2) Erotic fondling means touching a person's clothed or unclothed genitals or pubic area, breasts if the person is a female, or developing breast area if the person is a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(3) Erotic nudity means the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(4) Sadomasochistic abuse means flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the morbid interest;

(5) Sexually explicit conduct means: (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons

of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved; and

(6) Visual depiction means live performance or photographic representation and includes any undeveloped film or videotape or data stored on a computer disk or by other electronic means which is capable of conversion into a visual image and also includes any photograph, film, video, picture, digital image, or computer-displayed image, video, or picture, whether made or produced by electronic, mechanical, computer, digital, or other means.

Source: Laws 1985, LB 668, § 2; Laws 1986, LB 788, § 1; Laws 2009, LB97, § 17.
Operative date May 21, 2009.

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.

(6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18.
Operative date May 21, 2009.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.04 Violation; penalty.

(1) Any person who is under nineteen years of age at the time he or she violates section 28-1463.03 shall be guilty of a Class III felony for each offense.

(2) Any person who is nineteen years of age or older at the time he or she violates section 28-1463.03 shall be guilty of a Class ID felony for each offense.

(3) Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1978, LB 829, § 2; R.S.1943, (1979), § 28-1464; Laws 1985, LB 668, § 5; Laws 2009, LB97, § 19.
Operative date May 21, 2009.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20.
Operative date May 21, 2009.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

CHAPTER 29
CRIMINAL PROCEDURE

Article.
1. Definitions and General Rules of Procedure. 29-110.
4. Warrant and Arrest of Accused. 29-401.
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ARTICLE 1
DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section
29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813,

28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(6) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(7) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(8) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(9) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(10) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(11) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(12) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of

limitations has not expired as of such date and to offenses committed on or after such date.

(13) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB97, section 21, with LB155, section 17, to reflect all amendments.

Note: Changes made by LB97 became operative May 21, 2009. Changes made by LB155 became effective August 30, 2009.

Cross References

Nebraska Criminal Code, see section 28-101.
Securities Act of Nebraska, see section 8-1123.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section
29-401. Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

29-401 Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile have been notified or that reasonable efforts to notify such parents have been made as provided in section 43-253.

Source: G.S.1873, c. 58, § 283, p. 789; R.S.1913, § 8937; C.S.1922, § 9961; C.S.1929, § 29-401; R.S.1943, § 29-401; Laws 1967, c. 175, § 1, p. 490; Laws 1972, LB 1403, § 1; Laws 1981, LB 346, § 86; Laws 1988, LB 1030, § 23; Laws 1994, LB 451, § 1; Laws 2009, LB63, § 22.
Effective date May 28, 2009.

ARTICLE 9

BAIL

Section
29-901. Bail; personal recognizance; conditions.
29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; conditions.

Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or victims, witnesses, or other persons in the community. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the

period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23.
Effective date May 28, 2009.

Cross References

Appeals, suspension of sentence, see section 29-2301.
Forfeiture of recognizance, see sections 29-1105 to 29-1110.
Suspension of sentence, see section 29-2202.

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence, victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24.
Effective date May 28, 2009.

ARTICLE 19

PREPARATION FOR TRIAL

(c) DISCOVERY

Section
29-1912. Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.
29-1928. Repealed. Laws 2009, LB 63, § 50.

Section
29-1929. Repealed. Laws 2009, LB 63, § 50.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority;

(g) The known criminal history of a jailhouse witness;

(h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;

(i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;

(j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and

(k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider among other things whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) For purposes of subdivisions (1)(g) through (k) of this section, jailhouse witness means a person in the physical custody of any jail or correctional institution as (a) an accused defendant, (b) a convicted defendant awaiting sentencing, or (c) a convicted defendant serving a jail sentence, at the time the statements the jailhouse witness will testify about were disclosed.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25.
Effective date May 28, 2009.

29-1928 Repealed. Laws 2009, LB 63, § 50.

29-1929 Repealed. Laws 2009, LB 63, § 50.

ARTICLE 22
JUDGMENT ON CONVICTION

(c) PROBATION

Section
29-2259.01. Probation Cash Fund; created; use; investment.
29-2262.01. Repealed. Laws 2009, LB 63, § 50.
29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.

(c) PROBATION

29-2259.01 Probation Cash Fund; created; use; investment.

(1) There is hereby created the Probation Cash Fund. All money collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 and subdivisions

(4)(a) and (4)(b) of section 60-4,115 shall be remitted to the State Treasurer for credit to the fund.

(2) Expenditures from the money in the fund collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the money was collected.

(3)(a) The Office of Probation Administration shall use no more than five percent of the money in the fund collected in each fiscal year pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 for administrative costs of the office.

(b) Expenditures from the money in the fund collected pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 shall also be used to provide for the cost of installing, removing, and maintaining an ignition interlock device in accordance with subsection (9) of section 60-6,211.05. The office shall not be required to pay costs authorized under this subdivision that exceed the amount of funds available for this purpose.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer any money in the Ignition Interlock Device Fund on May 14, 2009, to the Probation Cash Fund.

Source: Laws 1990, LB 220, § 6; Laws 1992, LB 1059, § 25; Laws 1994, LB 1066, § 20; Laws 2001, Spec. Sess., LB 3, § 2; Laws 2003, LB 46, § 7; Laws 2009, LB497, § 1.
Effective date May 14, 2009.

Cross References

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

29-2262.01 Repealed. Laws 2009, LB 63, § 50.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005; or

(i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1;

Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2. Operative date January 1, 2010.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section
29-2320. Appeal of sentence by prosecuting attorney or Attorney General; when authorized.
29-2321. Appeal of sentence by prosecuting attorney or Attorney General; procedure.

29-2320 Appeal of sentence by prosecuting attorney or Attorney General; when authorized.

Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the prosecuting attorney charged with the prosecution of such defendant or the Attorney General may appeal the sentence imposed if there is a reasonable belief, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Source: Laws 1982, LB 402, § 1; Laws 1991, LB 732, § 82; Laws 2003, LB 17, § 15; Laws 2009, LB63, § 26.
Effective date May 28, 2009.

29-2321 Appeal of sentence by prosecuting attorney or Attorney General; procedure.

(1) Appeals under sections 29-2320 to 29-2325 shall be taken, by either the Attorney General or the prosecuting attorney, as follows:

(a) If the appeal is filed by the Attorney General, a notice of appeal shall be filed in the district court within twenty days after imposition of the sentence. A copy of the notice of appeal shall be sent to either the defendant or counsel for the defendant; or

(b) If the prosecuting attorney wishes to file the appeal, he or she, within ten days after imposition of the sentence, shall request approval from the Attorney General to proceed with the appeal. A copy of the request for approval shall be sent to the defendant or counsel for the defendant.

(2) If the Attorney General approves the request described in subdivision (1)(b) of this section, the prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant.

(3) If the Attorney General does not approve the request described in subdivision (1)(b) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted.

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

(5) Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Source: Laws 1982, LB 402, § 2; Laws 1991, LB 732, § 83; Laws 2003, LB 17, § 16; Laws 2009, LB63, § 27.
Effective date May 28, 2009.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section
29-2532. Transferred to section 83-964.
29-2533. Transferred to section 83-969.
29-2534. Transferred to section 83-970.
29-2535. Transferred to section 83-971.
29-2536. Transferred to section 83-972.
29-2537. Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.
29-2538. Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.
29-2539. Commission members; mileage; payment.
29-2540. Female convicted person; pregnant; notice to judge; procedures.
29-2541. Female convicted person; finding convicted person is pregnant; judge; duties; costs.
29-2542. Escaped convict; return; notify Supreme Court; fix date of execution.
29-2543. Person convicted of crime sentenced to death; Supreme Court; warrant.
29-2544. Repealed. Laws 2009, LB 36, § 21.
29-2545. Repealed. Laws 2009, LB 36, § 21.
29-2546. Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

29-2532 Transferred to section 83-964.

29-2533 Transferred to section 83-969.

29-2534 Transferred to section 83-970.

29-2535 Transferred to section 83-971.

29-2536 Transferred to section 83-972.

29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a

finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1.
Effective date August 30, 2009.

29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

Source: Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2.
Effective date August 30, 2009.

29-2539 Commission members; mileage; payment.

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3.
Effective date August 30, 2009.

29-2540 Female convicted person; pregnant; notice to judge; procedures.

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the

judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4.
Effective date August 30, 2009.

Cross References

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5.
Effective date August 30, 2009.

29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6.
Effective date August 30, 2009.

29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7.
Effective date August 30, 2009.

29-2544 Repealed. Laws 2009, LB 36, § 21.

29-2545 Repealed. Laws 2009, LB 36, § 21.

29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8.
Effective date August 30, 2009.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section
29-3506. Criminal history record information, defined.

29-3506 Criminal history record information, defined.

Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall include any judgment against or settlement with the state as a result of a wrongful conviction pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act. Criminal history record information shall not include intelligence or investigative information.

Source: Laws 1978, LB 713, § 6; Laws 2009, LB260, § 9.
Effective date August 30, 2009.

Cross References

Nebraska Claims for Wrongful Conviction and Imprisonment Act, see section 29-4601.

ARTICLE 39
PUBLIC DEFENDERS AND APPOINTED COUNSEL

(c) COUNTY REVENUE ASSISTANCE ACT

Section
29-3922. Terms, defined.
29-3927. Commission; duties.
29-3932. Repealed. Laws 2009, LB 154, § 27.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2.
Effective date August 30, 2009.

29-3927 Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers;

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service Loan Repayment Act which are recommended by the Legal Education for Public Service Loan Repayment Board pursuant to the act. The commission shall have the powers and duties provided in the act.

Source: Laws 1995, LB 646, § 9; Laws 1997, LB 729, § 8; Laws 2001, LB 335, § 4; Laws 2002, LB 876, § 66; Laws 2008, LB1014, § 28; Laws 2009, LB154, § 3.
Effective date August 30, 2009.

Cross References

Legal Education for Public Service Loan Repayment Act, see section 7-201.

29-3932 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section
29-4001. Act, how cited.
29-4001.01. Terms, defined.

Section
29-4003. Applicability of act.
29-4004. Registration; location; sheriff; duties; Nebraska State Patrol; duties.
29-4005. Registration duration; reduction in time; request; proof.
29-4006. Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.
29-4007. Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.
29-4008. False or misleading information prohibited; updates required.
29-4009. Information not confidential; limit on disclosure.
29-4010. Repealed. Laws 2009, LB 285, § 17.
29-4011. Violations; penalties; investigation and enforcement.
29-4013. Rules and regulations; release of information; duties; access to public notification information; access to documents.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4016. Terms, defined.

(a) SEX OFFENDER REGISTRATION ACT

29-4001 Act, how cited.

Sections 29-4001 to 29-4014 shall be known and may be cited as the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 1; Laws 2006, LB 1199, § 17; Laws 2009, LB97, § 23.
Operative date May 21, 2009.

29-4001.01 Terms, defined.

For purposes of the Sex Offender Registration Act:

(1) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was mentally or physically incapable of resisting or appraising the nature of his or her conduct;

(2) Blog means a web site contained on the Internet that is created, maintained, and updated in a log, journal, diary, or newsletter format by an individual, group of individuals, or corporate entity for the purpose of conveying information or opinions to Internet users who visit their web site;

(3) Chat room means a web site or server space on the Internet or communication network primarily designated for the virtually instantaneous exchange of text or voice transmissions or computer file attachments amongst two or more computers or electronic communication device users;

(4) Chat room identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, or text characters used by a chat room participant to identify himself or herself in a chat room or to identify the source of any content transmitted from a computer or electronic communication device to the web site or server space upon which the chat room is dedicated;

(5) DNA sample has the same meaning as in section 29-4103;

(6) Domain name means a series of text-based symbols, letters, numbers, or text characters used to provide recognizable names to numerically addressed

Internet resources that are registered by the Internet Corporation for Assigned Names and Numbers;

(7) Email means the exchange of electronic text messages and computer file attachments between computers or other electronic communication devices over a communications network, such as a local area computer network or the Internet;

(8) Email address means the string of letters, numbers, and symbols used to specify the source or destination of an email message that is transmitted over a communication network;

(9) Habitual living location means any place that an offender may stay for a period of more than three days even though the sex offender maintains a separate permanent address or temporary domicile;

(10) Instant messaging means a direct, dedicated, and private communication service, accessed with a computer or electronic communication device, that enables a user of the service to send and receive virtually instantaneous text transmissions or computer file attachments to other selected users of the service through the Internet or a computer communications network;

(11) Instant messaging identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, images, or text characters used by an instant messaging user to identify their presence to other instant messaging users or the source of any content sent from their computer or electronic communication device to another instant messaging user;

(12) Minor means a person under eighteen years of age;

(13) Social networking web site means a web page or collection of web sites contained on the Internet (a) that enables users or subscribers to create, display, and maintain a profile or Internet domain containing biographical data, personal information, photos, or other types of media, (b) that can be searched, viewed, or accessed by other users or visitors to the web site, with or without the creator's permission, consent, invitation, or authorization, and (c) that may permit some form of communication, such as direct comment on the profile page, instant messaging, or email, between the creator of the profile and users who have viewed or accessed the creator's profile;

(14) State DNA Data Base means the data base established pursuant to section 29-4104; and

(15) Temporary domicile means any place at which the person actually lives or stays for a period of at least three working days.

Source: Laws 2009, LB97, § 24; Laws 2009, LB285, § 3.

Note: LB97 became operative May 21, 2009. Changes made by LB285 became operative January 1, 2010.

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Unlawful intrusion on a minor pursuant to section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4.

Note: Changes made by LB97 became operative May 21, 2009. Changes made by LB285 became operative May 30, 2009.

29-4004 Registration; location; sheriff; duties; Nebraska State Patrol; duties.

(1) Any person subject to the Sex Offender Registration Act shall register within three working days after becoming subject to the act at a location designated by the Nebraska State Patrol for purposes of accepting such registration.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location, within three working days before the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location in a different county in this state, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location within the State of Nebraska, the division shall notify the sheriff of each affected county of the new address, temporary domicile, or habitual living location, within three working days. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff within three working days after the address change.

(4) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she moves to a new out-of-state address, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location outside of the State of Nebraska, the division shall notify the sheriff of each affected county in Nebraska and the other state's, country's, or territory's central repository for sex offender registration of the new out-of-state address, temporary domicile, or habitual living location, within three working days.

(5) Any person required to register under the act who is employed, carries on a vocation, or attends school shall inform, in person, the sheriff of the county in which he or she is employed, carries on a vocation, or attends school and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff, in person, of any changes in employment, vocation, or school of attendance, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose.

(6) Any person required to register under the act who is residing, has a temporary domicile, or is habitually living in another state, and is employed, carries on a vocation, or attends school in this state, shall report and register, in person, with the sheriff of the county in which he or she is employed, carries

on a vocation, or attends school in this state and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff of any changes in employment, vocation, or school of attendance, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis; and

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year.

(7) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her discharge, parole, furlough, work release, or release. The person shall be informed and information shall be obtained as required in section 29-4006.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than three working days, shall inform the sheriff of the county in which he or she is incarcerated, in writing, within three working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol immediately on the day on which it was received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(9) Any person required to register or who is registered under the act who no longer has a residence, temporary domicile, or habitual living location shall report such change in person to the sheriff of the county in which he or she is located, within three working days after such change in residence, temporary domicile, or habitual living location. Such person shall update his or her registration, in person, to the sheriff of the county in which he or she is located, on a form approved by the sex offender registration and community notification division of the Nebraska State Patrol at least once every thirty calendar days during the time he or she remains without residence, temporary domicile, or habitual living location.

(10) Each registering entity shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose. The information shall be forwarded on forms furnished by the division. The division shall maintain a central registry of sex offenders

required to register under the act. Any collected DNA samples shall be forwarded to the State DNA Data Base.

Source: Laws 1996, LB 645, § 4; Laws 2002, LB 564, § 4; Laws 2005, LB 713, § 5; Laws 2006, LB 1199, § 19; Laws 2009, LB285, § 5. Operative date January 1, 2010.

29-4005 Registration duration; reduction in time; request; proof.

(1)(a) Except as provided in subsection (2) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of supervised release, probation, or parole and shall continue to comply with the act for the period of time after the date of discharge from probation, parole, or supervised release or release from incarceration, whichever date is most recent, as set forth in subdivision (b) of this subsection. A sex offender shall keep the registration current for the full registration period but shall not be subject to verification procedures during any time the sex offender is in custody or under an inpatient civil commitment, unless the sex offender is allowed a reduction in his or her registration period under subsection (2) of this section.

(b) The full registration period is as follows:

(i) Fifteen years, if the sex offender was convicted of a registrable offense under section 29-4003 not punishable by imprisonment for more than one year;

(ii) Twenty-five years, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year; or

(iii) Life, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year and was convicted of an aggravated offense or had a prior sex offense conviction or has been determined to be a lifetime registrant in another state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction.

(2) A sex offender who is required to register for fifteen years may request a reduction in the registration period to ten years upon completion of ten years of the registration period after the date of discharge from probation, parole, supervised release, or incarceration, whichever date is most recent. The sex offender shall make the request to the Nebraska State Patrol. The sex offender shall provide proof that, during such registration period, he or she:

(a) Was not convicted of any offense for which imprisonment for more than one year could have been imposed;

(b) Was not convicted of any sex offense;

(c) Successfully completed any period of probation, parole, supervised release, or incarceration; and

(d) Successfully completed an appropriate sex offender treatment program.

(3) Any time period when any person who is required to register under the act knowingly or willfully fails to comply with such registration requirement shall not be counted as completed registration time and shall be used to recalculate the registration period. The recalculation shall be completed by the

sex offender registration and community notification division of the Nebraska State Patrol.

Source: Laws 1996, LB 645, § 5; Laws 2002, LB 564, § 5; Laws 2006, LB 1199, § 20; Laws 2009, LB285, § 6.
Operative date January 1, 2010.

29-4006 Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.

(1) Registration information required by the Sex Offender Registration Act shall be entered into a data base in a format approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include, but not be limited to, the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) The person's date of birth and any alias dates of birth;

(c) The person's social security number;

(d) The address of each residence at which the person resides, has a temporary domicile, has a habitual living location, or will reside;

(e) The name and address of any place where the person is an employee or will be an employee, including work locations without a single worksite;

(f) The name and address of any place where the person is a student or will be a student;

(g) The license plate number and a description of any vehicle owned or operated by the person and its regular storage location;

(h) The person's motor vehicle operator's license number, including the person's valid motor vehicle operator's license or state identification card submitted for photocopying;

(i) The person's original travel and immigration documents submitted for photocopying;

(j) The person's original professional licenses or certificates submitted for photocopying;

(k) The person's remote communication device identifiers and addresses, including, but not limited to, all global unique identifiers, serial numbers, Internet protocol addresses, telephone numbers, and account numbers specific to the device;

(l) The person's telephone numbers;

(m) A physical description of the person;

(n) A digital link to the text of the provision of law defining the criminal offense or offenses for which the person is registered under the act;

(o) Access to the criminal history of the person, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the person;

(p) A current photograph of the person;

(q) A set of fingerprints and palm prints of the person;

(r) A DNA sample of the person; and

(s) All email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the person uses or plans to use, all domain names registered by the registrant, and all blogs and Internet sites maintained by the person or to which the person has uploaded any content or posted any messages or information.

(2) When the person provides any information under subdivision (1)(k) or (s) of this section, the registrant shall sign a consent form, provided by the law enforcement agency receiving this information, authorizing the:

(a) Search of all the computers or electronic communication devices possessed by the person; and

(b) Installation of hardware or software to monitor the person's Internet usage on all the computers or electronic communication devices possessed by the person.

(3) Except as provided in section 29-4005, the registration information shall be verified as provided in subsections (4), (5), and (6) of this section for the duration of the registration period. The person shall appear in person for such verification at the office of the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living for purposes of accepting verifications and shall have his or her photograph and fingerprints taken upon request of verification personnel.

(4) A person required to register under the act for fifteen years shall report every twelve months in the month of his or her birth, in person, to the office of the sheriff of the county in which he or she resides for purposes of accepting verifications, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(5) A person required to register under the act for twenty-five years shall report, in person, every six months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and in the sixth month following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(6) A person required to register under the act for life shall report, in person, every three months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and every three months following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(7) The verification form shall be signed by the person required to register under the act and state whether the address last reported to the division is still correct.

(8) Upon receipt of registration and confirmation of the registry requirement, the sex offender registration and community notification division of the Nebraska State Patrol shall notify the person by certified mail of his or her registry duration and verification schedule.

(9) If the person required to register under the act fails to report in person as required in subsection (4), (5), or (6) of this section, the person shall be in violation of this section.

(10) If the person required to register under the act falsifies the registration or verification information or form or fails to provide or timely update law enforcement of any of the information required to be provided by the Sex Offender Registration Act, the person shall be in violation of this section.

(11) The verification requirements of a person required to register under the act shall not apply during periods of such person's incarceration or inpatient civil commitment. Verification shall be resumed as soon as such person is placed on any type of supervised release, parole, or probation or outpatient civil commitment or is released from incarceration or civil commitment. Prior to any type of release from incarceration or inpatient civil commitment, the person shall report a change of address, in writing, to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides, has a temporary domicile, or has a habitual living location. The sheriff shall submit the change of address to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(12) Any person required to register under the act shall, in person, inform the sheriff of any legal change in name within three working days after such change and provide a copy of the legal documentation supporting the change in name. The sheriff shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, immediately after receipt of the information and in a manner prescribed by the Nebraska State Patrol for such purpose.

(13) Any person required to register under the Sex Offender Registration Act shall inform the sheriff with whom he or she is required to register of any changes in or additions to such person's list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the registrant uses or plans to use, all domain names registered by the person, and all blogs and Internet web sites maintained by the person or to which the person has uploaded any content or posted any messages or information, in writing, by the next working day. The sheriff receiving this updated information shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, by the next working day after receipt of the information.

(14) At any time that a person required to register under the act violates the registry requirements and cannot be located, the registry information shall reflect that the person has absconded, a warrant shall be sought for the person's arrest, and the United States Marshals Service shall be notified.

Source: Laws 1996, LB 645, § 6; Laws 2002, LB 564, § 6; Laws 2006, LB 1199, § 21; Laws 2009, LB97, § 26; Laws 2009, LB285, § 7.

Note: Changes made by LB97 became operative May 21, 2009. Changes made by LB285 became operative January 1, 2010.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

(A) Kidnapping of a minor pursuant to section 28-313;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Incest of a minor pursuant to section 28-703;

(F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(H) Criminal child enticement pursuant to section 28-311;

(I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(J) Enticement by electronic communication device pursuant to section 28-833; or

(K) Any attempt or conspiracy to commit an offense listed in subdivisions (1)(a)(xiv)(A) through (1)(a)(xiv)(J) of this section;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) Provide a copy of the signed, written notification, the judgment and sentence, the information or amended information, and the journal entry of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the

state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

(A) Kidnapping of a minor pursuant to section 28-313;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Incest of a minor pursuant to section 28-703;

(F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(H) Criminal child enticement pursuant to section 28-311;

(I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(J) Enticement by electronic communication device pursuant to section 28-833; or

(K) Any attempt or conspiracy to commit an offense listed in subdivisions (3)(a)(xiv)(A) through (3)(a)(xiv)(J) of this section.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.

(4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.

(5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8.

Note: Changes made by LB97 became operative May 21, 2009. Changes made by LB285 became operative January 1, 2010.

29-4008 False or misleading information prohibited; updates required.

No person subject to the Sex Offender Registration Act shall knowingly and willfully furnish any false or misleading information in the registration or fail to provide or timely update law enforcement of any of the information required to be provided by the act.

Source: Laws 1996, LB 645, § 8; Laws 2009, LB97, § 28.
Operative date May 21, 2009.

29-4009 Information not confidential; limit on disclosure.

(1) Information obtained under the Sex Offender Registration Act shall not be confidential, except that the following information shall only be disclosed to law enforcement agencies, including federal or state probation or parole agencies, if appropriate:

(a) A sex offender's social security number;

(b) Any references to arrests of a sex offender that did not result in conviction;

(c) A sex offender's travel or immigration document information;

(d) A sex offender's remote communication device identifiers and addresses;

(e) A sex offender's email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers;

(f) A sex offender's telephone numbers;

(g) A sex offender's motor vehicle operator's license information or state identification card number; and

(h) The name of any employer of a sex offender.

(2) The identity of any victim of a sex offense shall not be released.

(3) The release of information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Source: Laws 1996, LB 645, § 9; Laws 1998, LB 204, § 2; Laws 2002, LB 564, § 8; Laws 2005, LB 713, § 6; Laws 2006, LB 1199, § 23; Laws 2009, LB285, § 9.
Operative date January 1, 2010.

29-4010 Repealed. Laws 2009, LB 285, § 17.
(Operative date January 1, 2010.)

29-4011 Violations; penalties; investigation and enforcement.

(1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony.

(2) Any person required to register under the act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class III felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the violation which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the act shall be a Class IV felony.

(3) Any law enforcement agency with jurisdiction in the area in which a person required to register under the act resides, has a temporary domicile, maintains a habitual living location, is employed, carries on a vocation, or attends school shall investigate and enforce violations of the act.

Source: Laws 1996, LB 645, § 11; Laws 2006, LB 1199, § 24; Laws 2009, LB285, § 10.
Operative date January 1, 2010.

29-4013 Rules and regulations; release of information; duties; access to public notification information; access to documents.

(1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section 29-4009.

(b) The procedures for release of information established by the Nebraska State Patrol shall provide for law enforcement and public notification using electronic systems.

(3) Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.

(4) The following shall have access to public notification information: Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993, 42 U.S.C. 5119a; any social service entity responsible for protecting minors in the child welfare system; any volunteer organization in which contact with minors or other vulnerable individuals might occur; any public housing agency in each area in which a registered sex offender resides or is an employee or a student; any governmental agency conducting confidential background checks for employment, volunteer, licensure, or certification purposes; and any health care provider who serves children or vulnerable adults for the purpose of conducting confidential background checks for employment. If any means of notification proposes a fee for usage, then nonprofit organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(5) Personnel for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender registration and community notification. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, birth certificates, or death certificates. The division shall not be charged for access to documents under this subsection. Access to such documents will ensure that a fair determination of what is an appropriate registration period is completed using the totality of all information available.

(6) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 13; Laws 1998, LB 204, § 3; Laws 2002, LB 564, § 10; Laws 2005, LB 713, § 7; Laws 2006, LB 1199, § 25; Laws 2007, LB463, § 1130; Laws 2009, LB285, § 11. Operative date January 1, 2010.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4016 Terms, defined.

For purposes of the Sexual Predator Residency Restriction Act:

(1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(2) Political subdivision means a village, a city, a county, a school district, a public power district, or any other unit of local government;

(3) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79;

(4) Sex offender means an individual who has been convicted of a crime listed in section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and

(5) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in section 29-4001.01, and who has victimized a person eighteen years of age or younger.

Source: Laws 2006, LB 1199, § 28; Laws 2009, LB285, § 12.
Operative date January 1, 2010.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

ARTICLE 42
AUDIOVISUAL COURT APPEARANCES

Section
29-4203. Repealed. Laws 2009, LB 90, § 3.
29-4204. Audiovisual communication system and facilities; requirements.

29-4203 Repealed. Laws 2009, LB 90, § 3.

29-4204 Audiovisual communication system and facilities; requirements.

The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially and be allowed to confidentially transmit papers back and forth; and

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge's or magistrate's chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be operated so that interested persons have an opportunity to observe the proceeding.

Source: Laws 1999, LB 623, § 4; Laws 2006, LB 1115, § 23; Laws 2009, LB90, § 1.
Effective date August 30, 2009.

ARTICLE 46

NEBRASKA CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT ACT

Section
29-4601. Act, how cited.
29-4602. Legislative findings.
29-4603. Recovery; claimant; proof required.
29-4604. Recovery of damages; determination of amount; restrictions.
29-4605. Extinguishment of lien for costs of defense services.
29-4606. Provision of services to claimant; how treated.
29-4607. Filing of claim.
29-4608. Claimant; rights; recovery under act; effect.

29-4601 Act, how cited.

Sections 29-4601 to 29-4608 shall be known and may be cited as the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

Source: Laws 2009, LB260, § 1.
Effective date August 30, 2009.

29-4602 Legislative findings.

The Legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. The Legislature also finds that such persons should have an available avenue of redress. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the Nebraska Claims for Wrongful Conviction and Imprisonment Act that persons who can demonstrate that they were wrongfully convicted shall have a claim against the state as provided in the act.

Source: Laws 2009, LB260, § 2.
Effective date August 30, 2009.

29-4603 Recovery; claimant; proof required.

In order to recover under the Nebraska Claims for Wrongful Conviction and Imprisonment Act, the claimant shall prove each of the following by clear and convincing evidence:

(1) That he or she was convicted of one or more felony crimes and subsequently sentenced to a term of imprisonment for such felony crime or crimes and has served all or any part of the sentence;

(2) With respect to the crime or crimes under subdivision (1) of this section, that the Board of Pardons has pardoned the claimant, that a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained;

(3) That he or she was innocent of the crime or crimes under subdivision (1) of this section; and

(4) That he or she did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement to cause or bring about such conviction or the conviction of another, with respect to the crime or crimes under subdivision (1)

of this section, except that a guilty plea, a confession, or an admission, coerced by law enforcement and later found to be false, does not constitute bringing about his or her own conviction of such crime or crimes.

Source: Laws 2009, LB260, § 3.
Effective date August 30, 2009.

29-4604 Recovery of damages; determination of amount; restrictions.

(1) A claimant under the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall recover damages found to proximately result from the wrongful conviction and that have been proved based upon a preponderance of the evidence.

(2) The following costs shall not offset damages:

(a) Costs of imprisonment; and

(b) Value of any care or education provided to the claimant while he or she was imprisoned.

(3) No damages shall be payable to the claimant for any period of time during which he or she was concurrently imprisoned for any unrelated criminal offense.

(4) In no case shall damages awarded under the act exceed five hundred thousand dollars per claimant per occurrence.

(5) A claimant's cause of action under the act shall not be assignable and shall not survive the claimant's death.

Source: Laws 2009, LB260, § 4.
Effective date August 30, 2009.

29-4605 Extinguishment of lien for costs of defense services.

If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant in connection with the criminal case that resulted in his or her wrongful conviction, the court shall extinguish the lien.

Source: Laws 2009, LB260, § 5.
Effective date August 30, 2009.

29-4606 Provision of services to claimant; how treated.

Nothing contained in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall preclude the state from providing services to the claimant upon exoneration, and the reasonable value of services provided shall be treated as an advance against any award or judgment under the act.

Source: Laws 2009, LB260, § 6.
Effective date August 30, 2009.

29-4607 Filing of claim.

A claim brought pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall be filed under the State Tort Claims Act.

Source: Laws 2009, LB260, § 7.
Effective date August 30, 2009.

Cross References

State Tort Claims Act, see section 81-8,235.

29-4608 Claimant; rights; recovery under act; effect.

Nothing in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall limit the claimant from making any other claim available against any other party or based upon any other theory of recovery, except that a claimant who recovers a claim under the act shall not have any other claim against the state based upon any other theory of recovery or law.

Source: Laws 2009, LB260, § 8.
Effective date August 30, 2009.

CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

Article.
23. Intestate Succession and Wills.
Part 1— Intestate Succession. 30-2302.
24. Probate of Wills and Administration.
Part 8— Creditors' Claims. 30-2485, 30-2487.
Part 12—Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates. 30-24,125.
Part 13—Succession to Real Property by Affidavit for Small Estates. 30-24,129.
31. Uniform Principal and Income Act.
Part 1— Definitions and Fiduciary Duties. 30-3116.
Part 4— Allocation of Receipts During Administration of Trust.
Subpart 3— Receipts Normally Apportioned. 30-3135, 30-3135.01.
Part 5— Allocation of Disbursements During Administration of Trust. 30-3146.
32. Fiduciaries. 30-3209.

ARTICLE 23

INTESTATE SUCCESSION AND WILLS

PART 1—INTESTATE SUCCESSION

Section
30-2302. Share of the spouse.

PART 1—INTESTATE SUCCESSION

30-2302 Share of the spouse.

The intestate share of the surviving spouse is:

(1) if there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) if there is no surviving issue but the decedent is survived by a parent or parents, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;

(3) if there are surviving issue all of whom are issue of the surviving spouse also, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;

(4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

Source: Laws 1974, LB 354, § 24, UPC § 2-102; Laws 1980, LB 694, § 2; Laws 2009, LB35, § 19.
Operative date August 30, 2009.

ARTICLE 24
PROBATE OF WILLS AND ADMINISTRATION

PART 8—CREDITORS' CLAIMS

Section
30-2485. Limitations on presentation of claims.
30-2487. Payment of claims; order.

PART 12—COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125. Collection of personal property by affidavit.

PART 13—SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129. Succession to real property by affidavit.

PART 8—CREDITORS' CLAIMS

30-2485 Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) Within two months after the date of the first publication of notice to creditors if notice is given in compliance with sections 25-520.01 and 30-2483, except that claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state. If any creditor has a claim against a decedent's estate which arose before the death of the decedent and which was not presented within the time allowed by this subdivision, including any creditor who did not receive notice, such creditor may apply to the court within sixty days after the expiration date provided in this subdivision for additional time and the court, upon good cause shown, may allow further time not to exceed thirty days;

(2) Within three years after the decedent's death if notice to creditors has not been given in compliance with sections 25-520.01 and 30-2483.

(b) All claims, other than for costs and expenses of administration as defined in section 30-2487, against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) Any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by liability insurance.

Source: Laws 1974, LB 354, § 163, UPC § 3-803; Laws 1991, LB 95, § 1; Laws 2009, LB35, § 20.
Operative date August 30, 2009.

30-2487 Payment of claims; order.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;

(2) Reasonable funeral expenses;

(3) Debts and taxes with preference under federal law;

(4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent and claims filed by the Department of Health and Human Services pursuant to section 68-919;

(5) Debts and taxes with preference under other laws of this state;

(6) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) For purposes of this section and section 30-2485, costs and expenses of administration includes expenses incurred in taking possession or control of estate assets and the management, protection, and preservation of the estate assets, expenses related to the sale of estate assets, and expenses in the day-to-day operation and continuation of business interests for the benefit of the estate.

Source: Laws 1974, LB 354, § 165, UPC § 3-805; Laws 1975, LB 481, § 17; Laws 1994, LB 1224, § 40; Laws 1996, LB 1044, § 90; Laws 2006, LB 1248, § 53; Laws 2007, LB296, § 49; Laws 2009, LB35, § 21.
Operative date August 30, 2009.

PART 12—COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2; Laws 2009, LB35, § 22.
Operative date August 30, 2009.

PART 13—SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed thirty thousand dollars. The value of the decedent's interest shall be determined from the value of the property as shown on the assessment rolls for the year in which the decedent died;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the claiming successor is entitled to the real property by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2; Laws 2009, LB35, § 23.
Operative date August 30, 2009.

ARTICLE 31

UNIFORM PRINCIPAL AND INCOME ACT

PART 1—DEFINITIONS AND FIDUCIARY DUTIES

Section
30-3116. Act, how cited.
PART 4—ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST
SUBPART 3—RECEIPTS NORMALLY APPORTIONED
30-3135. Deferred compensation, annuities, and similar payments; allocation to principal and income.
30-3135.01. Trust; marital deduction; when provisions applicable.
PART 5—ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST
30-3146. Income taxes.

PART 1—DEFINITIONS AND FIDUCIARY DUTIES

30-3116 Act, how cited.

Sections 30-3116 to 30-3149 shall be known and may be cited as the Uniform Principal and Income Act.

Source: Laws 2001, LB 56, § 1; Laws 2005, LB 533, § 33; Laws 2009, LB80, § 1.
Effective date February 27, 2009.

PART 4—ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SUBPART 3—RECEIPTS NORMALLY APPORTIONED

30-3135 Deferred compensation, annuities, and similar payments; allocation to principal and income.

(a) In this section:

(1) Payment means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services

rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment; and

(2) Separate fund includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the Uniform Principal and Income Act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least three percent of the fund's value,

according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section 30-3136 applies.

Source: Laws 2001, LB 56, § 20; Laws 2009, LB80, § 2.
Effective date February 27, 2009.

30-3135.01 Trust; marital deduction; when provisions applicable.

Section 30-3135, as amended by Laws 2009, LB 80, applies to a trust described in subsection (d) of section 30-3135 on and after the following dates:

(1) If the trust is not funded as of February 27, 2009, the date of the decedent's death;

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death; or

(3) If the trust is not described in subdivision (1) or (2) of this section, January 1, 2009.

Source: Laws 2009, LB80, § 4.
Effective date February 27, 2009.

PART 5—ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

30-3146 Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Source: Laws 2001, LB 56, § 31; Laws 2009, LB80, § 3.
Effective date February 27, 2009.

ARTICLE 32
FIDUCIARIES

Section
30-3209. Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

30-3209 Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

(1) Corporate trustees authorized by Nebraska law to exercise fiduciary powers and holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, public power districts, or other governmental or political subdivisions may invest and reinvest such funds in such securities and investments as are authorized for trustees, guardians, conservators, personal representatives, or administrators under the laws of Nebraska. Retirement or pension funds of such cities, villages, districts, or subdivisions may be invested in annuities issued by life insurance companies authorized to do business in Nebraska. Except as provided in subsection (2) of this section, any other retirement or pension funds of cities, including cities operating under home rule charters, villages, school districts except as provided in section 79-9,107, public power districts, and all other governmental or political subdivisions may be invested and reinvested, as the governing body of such city, village, school district, public power district, or other governmental or political subdivision may determine, in the following classes of securities and investments: (a) Bonds, notes, or other obligations of the United States or those guaranteed by or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof; (b) bonds or other evidences of indebtedness of the State of Nebraska and full faith and credit obligations of or obligations unconditionally guaranteed as to principal and interest by any other state of the United States; (c) bonds, notes, or obligations of any municipal or political subdivision of the State of Nebraska which are general obligations of the issuer thereof and revenue bonds or debentures of any city, county, or utility district of this state when the earnings available for debt service have, for a five-year period immediately preceding the date of purchase, averaged not less than one and one-half times such debt service requirements; (d) bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration; (e) certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation or capital stock financial institutions, and if the amount deposited exceeds the amount of insurance available thereon, then the excess shall be secured in the same manner as for the deposit of public funds; (f) accounts with building and loan associations, qualifying mutual financial institutions, or federal savings and loan associations in the State of Nebraska to the extent that such accounts are insured or guaranteed by the Federal Deposit Insurance Corporation; (g) bonds or other interest-bearing obligations of any corporation organized under the laws of the United States or any state thereof if (i) at the time the purchase is made, they are given, by at least one statistical organization whose publication is in general use, one of the three highest ratings given by such organization and (ii) not more than five percent of the fund shall be invested in the obligations of any one issuer; (h) direct short-term obligations, generally classified as commercial paper, of any

corporation organized or existing under the laws of the United States or any state thereof with a net worth of ten million dollars or more; and (i) preferred or common stock of any corporation organized under the laws of the United States or of any state thereof with a net worth of ten million dollars or more if (i) not more than fifty percent of the total investments at the time such investment is made is in this class and not more than five percent is invested in each of the first five years and (ii) not more than five percent thereof is invested in the securities of any one corporation. Notwithstanding the percentage limits stated in this subsection, the cash proceeds of the sale of such preferred or common stock may be reinvested in any securities authorized under this subdivision. No city, village, school district, public power district, or other governmental subdivision or the governing body thereof shall be authorized to sell any securities short, buy on margin, or buy, sell, or engage in puts and calls. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) Notwithstanding the limitations prescribed in subsection (1) of this section, trustees holding retirement or pension funds for the benefit of employees or former employees of any city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located shall invest such funds in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees shall not buy on margin, buy call options, or buy put options. The trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. If shares of stock are purchased under this subsection, all proxies may be voted by the trustees. The asset allocation restrictions set forth in subsection (1) of this section shall not be applicable to the funds of pension or retirement systems administered by or on behalf of a city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located.

Source: Laws 1967, c. 257, § 1, p. 678; Laws 1984, LB 752, § 1; Laws 1989, LB 33, § 25; R.S.Supp.,1989, § 24-601.04; Laws 1992, LB 757, § 21; Laws 1996, LB 900, § 1036; Laws 1998, LB 1321, § 78; Laws 2001, LB 362, § 29; Laws 2001, LB 408, § 12; Laws 2009, LB259, § 12.
Effective date March 6, 2009.

CHAPTER 31
DRAINAGE

Article.
7. Sanitary and Improvement Districts.
(b) Districts Formed under Act of 1949. 31-735.

ARTICLE 7
SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section
31-735. District; trustees; election; procedure; term; notice; qualified voters.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-735 District; trustees; election; procedure; term; notice; qualified voters.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a

limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any

legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any public, private, or municipal corporation owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 5 p.m. on the date set for the election.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1.
Effective date August 30, 2009.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.

CHAPTER 32
ELECTIONS

Article.
3. Registration of Voters. 32-310.
5. Officers and Issues.
   (a) Offices and Officeholders. 32-519 to 32-546.01.
   (b) Local Elections. 32-555.01.
6. Filing and Nomination Procedures. 32-606, 32-607.
7. Political Parties. 32-707.
9. Voting and Election Procedures. 32-960.
17. Vote Nebraska Initiative. Repealed.

ARTICLE 3
REGISTRATION OF VOTERS

Section
32-310. Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.

32-310 Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.

(1) The State Department of Education and the Department of Health and Human Services shall provide the opportunity to register to vote at the time of application, review, or change of address for the following programs, as applicable: (a) The Supplemental Nutrition Assistance Program; (b) the medicaid program; (c) the WIC program as defined in section 71-2225; (d) the aid to dependent children program; (e) the vocational rehabilitation program; and (f) any other public assistance program or program primarily for the purpose of providing services to persons with disabilities. If the application, review, or change of address is accomplished through an agent or contractor of the department, the agent or contractor shall provide the opportunity to register to vote. Any information on whether an applicant registers or declines to register and the agency at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(2) The department, agent, or contractor shall make the mail-in registration application described in section 32-320 available at the time of application, review, or change of address and shall provide assistance, if necessary, to the applicant in completing the application to register to vote. The department shall retain records indicating whether an applicant accepted or declined the opportunity to register to vote.

(3) Department personnel, agents, and contractors involved in the voter registration process pursuant to this section shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

(4) The applicant may return the completed voter registration application to the department, agent, or contractor or may personally mail or deliver the application to the election commissioner or county clerk as provided in section

32-321. If the applicant returns the completed application to the department, agent, or contractor, the department, agent, or contractor shall deliver the application to the election commissioner or county clerk of the county in which the office of the department, agent, or contractor is located not later than ten days after receipt by the department, agent, or contractor, except that if the application is returned to the department, agent, or contractor within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The election commissioner or county clerk shall, if necessary, forward the application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. The application shall be completed and returned to the department, agency, or contractor by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(5) The departments shall adopt and promulgate rules and regulations to ensure compliance with this section.

Source: Laws 1994, LB 76, § 72; Laws 1996, LB 1044, § 93; Laws 1997, LB 764, § 33; Laws 2005, LB 566, § 9; Laws 2007, LB296, § 51; Laws 2009, LB288, § 1.
Operative date August 30, 2009.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section
32-519. County assessor; election; when required; terms; qualifications; partisan ballot.
32-524. Clerk of the district court; election; when required; terms; partisan ballot.
32-546.01. Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(b) LOCAL ELECTIONS

32-555.01. Learning community; districts; redistricting.

(a) OFFICES AND OFFICEHOLDERS

32-519 County assessor; election; when required; terms; qualifications; partisan ballot.

(1) Except as provided in section 22-417, at the statewide general election in 1990 and each four years thereafter, a county assessor shall be elected in each county having a population of more than three thousand five hundred inhabitants and more than one thousand two hundred tax returns. The county assessor shall serve for a term of four years.

(2) The county board of any county shall order the submission of the question of electing a county assessor in the county to the registered voters of the county at the next statewide general election upon presentation of a petition to the county board (a) conforming to the provisions of section 32-628, (b) not less than sixty days before any statewide general election, (c) signed by at least ten percent of the registered voters of the county secured in not less than two-fifths of the townships or precincts of the county, and (d) asking that the question be submitted to the registered voters in the county. The form of submission upon

the ballot shall be as follows: For election of county assessor; Against election of county assessor. If a majority of the votes cast on the question are against the election of a county assessor in such county, the duties of the county assessor shall be performed by the county clerk and the office of county assessor shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time. If a majority of the votes cast on the question are in favor of the election of a county assessor, the office shall continue or a county assessor shall be elected at the next statewide general election.

(3) The county assessor shall meet the qualifications found in sections 23-3202 and 23-3204. The county assessor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 115; Laws 1996, LB 1085, § 46; Laws 2009, LB121, § 4.
Operative date July 1, 2013.

32-524 Clerk of the district court; election; when required; terms; partisan ballot.

(1) Except as provided in section 22-417:

(a) In counties having a population of seven thousand inhabitants or more, there shall be elected one clerk of the district court at the statewide general election in 1962 and every four years thereafter; and

(b) In counties having a population of less than seven thousand inhabitants, there shall be elected a clerk of the district court at the first statewide general election following a determination by the county board and the district judge for the county that such officer should be elected and each four years thereafter. When such a determination is not made in such a county, the county clerk shall be ex officio clerk of the district court and perform the duties by law devolving upon that officer.

(2) In any county upon presentation of a petition to the county board (a) not less than sixty days before the statewide general election in 1976 or every four years thereafter, (b) signed by registered voters of the county equal in numbers to at least fifteen percent of the total vote cast for Governor at the most recent gubernatorial election in the county, secured in not less than two-fifths of the townships or precincts of the county, and (c) asking that the question of not electing a clerk of the district court in the county be submitted to the registered voters therein, the county board, at the next statewide general election, shall order the submission of the question to the registered voters of the county. The form of submission upon the ballot shall be as follows:

For election of a clerk of the district court;

Against election of a clerk of the district court.

(3) If a majority of the votes cast on the question are against the election of a clerk of the district court in such county, the duties of the clerk of the district court shall be performed by the county clerk and the office of clerk of the district court shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time.

(4) If a majority of the votes cast on the question are in favor of the election of a clerk of the district court, the office shall continue or a clerk of the district

court shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the clerk of the district court shall be four years or until his or her successor is elected and qualified. The clerk of the district court shall meet the qualifications found in section 24-337.04. The clerk of the district court shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 120; Laws 1996, LB 1085, § 47; Laws 2009, LB7, § 2.
Effective date August 30, 2009.

32-546.01 Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(1) Each learning community shall be governed by a learning community coordinating council consisting of eighteen voting members, with twelve members elected on a nonpartisan ballot from six numbered subcouncil districts created pursuant to section 32-555.01 and with six members appointed from such subcouncil districts pursuant to this section. Each voter shall be allowed to cast votes for one candidate at both the primary and general elections to represent the subcouncil district in which the voter resides. The four candidates receiving the most votes at the primary election shall advance to the general election. The two candidates receiving the most votes at the general election shall be elected. A candidate shall reside in the subcouncil district for which he or she is a candidate. Coordinating council members shall be elected on the nonpartisan ballot.

(2) The initial elected members shall be nominated at the statewide primary election and elected at the statewide general election immediately following the certification of the establishment of the learning community, and subsequent members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Except as provided in this section, such elections shall be conducted pursuant to the Election Act.

(3) Vacancies in office for elected members shall occur as set forth in section 32-560. Whenever any such vacancy occurs, the remaining elected members of such council shall appoint an individual residing within the geographical boundaries of the subcouncil district for the balance of the unexpired term.

(4) Members elected to represent odd-numbered districts in the first election for the learning community coordinating council shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election for the learning community coordinating council shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(5) The appointed members shall be appointed in November of each even-numbered year after the general election. Appointed members shall be school board members of school districts in the learning community either elected to take office the following January or continuing their current term of office for the following two years. For learning communities to be established the following January pursuant to orders issued pursuant to section 79-2102, the Secretary of State shall hold a meeting of the school board members of the school districts in such learning community to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of such learning community. For subsequent appointments, the current

appointed members of the coordinating council shall hold a meeting of the school board members of such school districts to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of the learning community. The appointed members shall be selected by the school board members of the school districts in the learning community who reside in the subcouncil district to be represented pursuant to a secret ballot, shall reside in the subcouncil district to be represented, and shall be appointed for two-year terms and until their successors are appointed and qualified.

(6) Vacancies in office for appointed members shall occur upon the resignation, death, or disqualification from office of an appointed member. Disqualification from office shall include ceasing membership on the school board for which membership qualified the member for the appointment to the learning community coordinating council or ceasing to reside in the subcouncil district represented by such member of the learning community coordinating council. Whenever such vacancy occurs, the remaining appointed members shall hold a meeting of the school board members of the school districts in such learning community to appoint a member from such school boards who lives in the subcouncil district to be represented to serve for the balance of the unexpired term.

(7) Each learning community coordinating council shall also have a nonvoting member from each member school district which does not have either an elected or an appointed member who resides in the school district on the council. Such nonvoting members shall be appointed by the school board of the school district to be represented to serve for two-year terms, and notice of the nonvoting member selected shall be submitted to the Secretary of State by such board prior to December 31 of each even-numbered year. Each such nonvoting member shall be a resident of the appointing school district and shall not be a school administrator employed by such school district. Whenever a vacancy occurs, the school board of such school district shall appoint a new nonvoting member and submit notice to the Secretary of State and to the learning community coordinating council.

(8) Members of a learning community coordinating council shall take office on the first Thursday after the first Tuesday in January following their election or appointment, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office. Each voting member shall be paid a per diem in an amount determined by such council up to two hundred dollars per day for official meetings of the council and the achievement subcouncil for which he or she is a member, up to a maximum of twelve thousand dollars per fiscal year, and shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council.

Source: Laws 2007, LB641, § 49; Laws 2008, LB1154, § 3; Laws 2009, LB392, § 5.
Effective date May 27, 2009.

(b) LOCAL ELECTIONS

32-555.01 Learning community; districts; redistricting.

The election commissioners of the applicable counties, pursuant to certification of the establishment of a learning community pursuant to section 79-2102,

shall divide the territory of the new learning community into six numbered districts for the purpose of electing members to the learning community coordinating council in compliance with section 32-553 and for the purpose of organizing achievement subcouncils pursuant to section 79-2117. Such districts shall be compact and contiguous and substantially equal in population. The newly established subcouncil districts shall be certified to the Secretary of State on or before November 1 immediately following such certification. The newly established subcouncil districts shall apply beginning with the election of the first council members for such learning community. Following the drawing of initial subcouncil districts pursuant to this section, additional redistricting thereafter shall be undertaken by the learning community coordinating council according to section 32-553.

Source: Laws 2007, LB641, § 37; Laws 2009, LB392, § 6.
Effective date May 27, 2009.

ARTICLE 6
FILING AND NOMINATION PROCEDURES

Section
32-606. Candidate filing form; deadline for filing.
32-607. Candidate filing forms; contents; filing officers.

32-606 Candidate filing form; deadline for filing.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office by August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or

prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7.
Effective date May 27, 2009.

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the candidate's name; residence address; mailing address if different from the residence address; telephone number; office sought; and party affiliation if the office sought is a partisan office. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form; and

(4) For city or village officers, in the office of the city or village clerk, except that in the case of joint elections, the filing may be either in the office of the election commissioner or county clerk or in the office of the city or village clerk with deputized personnel. When the city or village clerk is deputized to take filings, he or she shall return all filings to the office of the election commissioner or county clerk by the end of the next business day following the filing deadline.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2.
Effective date August 30, 2009.

ARTICLE 7
POLITICAL PARTIES

Section
32-707. County postprimary conventions; time; place; transaction of business.

32-707 County postprimary conventions; time; place; transaction of business.

(1) The county postprimary convention of a political party shall be held in the county any time during the first ten days in June following the statewide primary election at an hour and place to be designated by the chairperson of the county central committee of a political party. The county central committee chairperson shall, after appropriate consultation with the central committee, certify the date, time, and location of the convention to the election commissioner or county clerk not later than the first Tuesday in May preceding the primary election. The election commissioner or county clerk shall issue certificates of election to each person elected delegate to the county postprimary convention of a political party and shall notify each person elected of the time and place of the holding of such county postprimary convention. The county central committee chairperson shall cause to be published, at least fifteen days prior to the date of the county postprimary convention, an official notice of the date, time, and place of the convention in at least one newspaper of general circulation within the county.

(2) The election commissioner or county clerk shall deliver to the temporary secretary of each county postprimary convention of a political party the roll, properly certified, showing the name and address of each delegate elected to such convention. Upon receipt of such roll, the convention shall organize and proceed with the transaction of business which is properly before it. A county chairperson, secretary, treasurer, and other officials may be elected. The authority reposed in delegates to the county postprimary convention by reason of their election shall be deemed personal in its nature, and no such delegate may, by power of attorney, by proxy, or in any other way, authorize any person in such delegate's name or on such delegate's behalf to appear at such county postprimary convention, cast ballots at the convention, or participate in the organization or transaction of any business of the convention. In case of a vacancy in the elected delegates, such elected delegates present shall have the power to fill any vacancy from the qualified registered voters of the precinct in which the vacancy exists.

Source: Laws 1994, LB 76, § 207; Laws 1997, LB 764, § 69; Laws 2009, LB133, § 1.
Effective date August 30, 2009.

ARTICLE 9
VOTING AND ELECTION PROCEDURES

Section
32-960. County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after

approval of the application to registered voters of any or all of the precincts in the county in lieu of establishing polling places for such precincts. The application shall include a written plan for the conduct of the election, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3.
Effective date August 30, 2009.

ARTICLE 17

VOTE NEBRASKA INITIATIVE

Section
32-1701. Repealed. Laws 2009, LB 154, § 27.

32-1701 Repealed. Laws 2009, LB 154, § 27.

CHAPTER 33
FEES AND SALARIES

Section
33-107.03. Court automation fee.
33-117. Sheriffs; fees; disposition; mileage; report to county board.

33-107.03 Court automation fee.

In addition to all other court costs assessed according to law, a court automation fee of eight dollars shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Automation Cash Fund.

Source: Laws 2002, Second Spec. Sess., LB 13, § 2; Laws 2009, LB35, § 24.
Operative date August 30, 2009.

33-117 Sheriffs; fees; disposition; mileage; report to county board.

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) to (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, twelve dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be twelve dollars for the first person served at that time and location and three dollars for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, six dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in section 81-1176, except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or

parties liable for the payment of same; (i) levying a writ or a court order and return thereof, eighteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, eighteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2)(a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or when no money is received or disbursed by the sheriff, the commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) Commencing on and after January 1, 1988, all fees earned pursuant to this section, except fees for mileage, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

Source: R.S.1866, c. 19, § 5, p. 161; Laws 1877, § 1, p. 40; Laws 1877, § 5, p. 217; Laws 1907, c. 53, § 1, p. 225; R.S.1913, §§ 2421, 2441; Laws 1915, c. 37, § 1, p. 106; Laws 1921, c. 102, § 1, p. 371; C.S.1922, §§ 2362, 2381; C.S.1929, §§ 33-101, 33-120; Laws 1933, c. 96, § 7, p. 386; Laws 1935, c. 79, § 1, p. 266; C.S.Supp.,1941, § 33-120; Laws 1943, c. 86, § 1(1), p. 286; R.S. 1943, § 33-117; Laws 1947, c. 123, § 1, p. 358; Laws 1951, c. 266, § 1, p. 895; Laws 1953, c. 118, § 1, p. 373; Laws 1957, c. 70, § 5, p. 297; Laws 1959, c. 84, § 3, p. 385; Laws 1961, c. 161, § 1, p. 487; Laws 1961, c. 162, § 1, p. 489; Laws 1965, c. 186, § 1, p. 575; Laws 1967, c. 125, § 4, p. 401; Laws 1969, c. 273, § 1, p. 1037; Laws 1974, LB 625, § 3; Laws 1978, LB 691, § 3; Laws 1980, LB 615, § 3; Laws 1980, LB 628, § 2; Laws 1981, LB 204,

§ 51; Laws 1982, LB 662, § 1; Laws 1984, LB 394, § 9; Laws 1987, LB 223, § 1; Laws 1988, LB 1030, § 34; Laws 1996, LB 1011, § 22; Laws 2009, LB35, § 25.
Operative date May 30, 2009.

Cross References

For other provisions for fees of sheriff:
Certificate of title, inspection fees, see section 60-158.
Distraint and sale of taxpayer's property, see section 77-3906.
Distress warrant, issuance, levy, and return, fee, see section 77-1720.
Handgun, application, filing fee, see section 69-2404.
Summons in error, see section 25-1904.
Summons of county board of equalization, see section 77-1509.
Summons out of county, see section 25-1713.
Transporting mental health patients, see section 71-929.
Transporting prisoners, see section 83-424.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

Article.
3. Court Action for Settling Disputed Corners. 34-301.

ARTICLE 3
COURT ACTION FOR SETTLING DISPUTED CORNERS

Section
34-301. Disputed corners and boundaries; court action to settle; procedure.

34-301 Disputed corners and boundaries; court action to settle; procedure.

When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. If any public road is likely to be affected thereby, the proper county shall be made defendant. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. The action shall be a special one, and the only necessary pleading therein shall be the complaint of the plaintiff describing the land involved, and, so far as may be, the interest of the respective parties and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue shall be tried before the district court under its equity jurisdiction without the intervention of a jury, and appeals from such proceedings shall be had and taken in conformity with the equity rules.

Source: Laws 1923, c. 103, § 1, p. 258; C.S.1929, § 34-301; R.S.1943, § 34-301; Laws 2009, LB35, § 26.
Operative date August 30, 2009.

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.
3. Hours of Duty of Firefighters. 35-302.

ARTICLE 3
HOURS OF DUTY OF FIREFIGHTERS

Section
35-302. Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

35-302 Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single-duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure compliance with the requirements of this section unless by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week unless otherwise provided by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter. No agreement under this section shall allow a firefighter who is scheduled to work less than a twenty-four-hour shift and who holds the rank of fire chief or works as an immediate subordinate to a fire chief to fill temporary vacancies created by the absence of a firefighter who is assigned to work a twenty-four-hour shift and who holds a rank lower than fire chief. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

Source: Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101; Laws 2009, LB537, § 1.
Effective date August 30, 2009.

CHAPTER 37
GAME AND PARKS

Article.
2. Game Law General Provisions. 37-201.
3. Commission Powers and Duties.
(a) General Provisions. 37-314.
(b) Funds. 37-327.
4. Permits and Licenses.
(a) General Permits. 37-407 to 37-440.
(b) Special Permits and Licenses. 37-447 to 37-4,111.
5. Regulations and Prohibited Acts.
(a) General Provisions. 37-501 to 37-507.
(b) Game and Birds. 37-513 to 37-528.
6. Enforcement. 37-613, 37-614.
7. Recreational Lands.
(c) Privately Owned Lands. 37-727.
12. State Boat Act. 37-1201 to 37-1290.
13. Nebraska Shooting Range Protection Act. 37-1301 to 37-1310.

ARTICLE 2
GAME LAW GENERAL PROVISIONS

Section
37-201. Law, how cited.

37-201 Law, how cited.

Sections 37-201 to 37-811 shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2.
Effective date August 30, 2009.

ARTICLE 3
COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

Section
37-314. Seasons; opening and closing; powers of commission; rules and regulations; violations; penalty.

(b) FUNDS

37-327. Commission; fees; duty to establish; limit on increase.

(a) GENERAL PROVISIONS

37-314 Seasons; opening and closing; powers of commission; rules and regulations; violations; penalty.

(1) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, fix, prescribe, and publish rules and regulations as to open seasons and closed seasons, either permanent or temporary, as to conservation orders or similar wildlife management activities authorized by the United States Fish and Wildlife Service, as to bag limits or the methods or type, kind, and specifications of hunting, fur-harvesting, or fishing gear used in the taking of any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds, as to the age, sex, species, or area of the state in which any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds may be taken, or as to the taking of any particular kinds, species, or sizes of game, game fish, nongame fish, game animals, fur-bearing animals, and game birds in any designated waters or areas of this state after due investigation and having due regard to the distribution, abundance, economic value, breeding habits, migratory habits, and causes of depletion or extermination of the same in such designated waters or areas and having due regard to the volume of the hunting, fur harvesting, and fishing practiced therein and the climatic, seasonal, and other conditions affecting the protection, preservation, and propagation of the same in such waters or areas. Such rules and regulations may be amended, modified, or repealed from time to time, subject to such limitations and standards, and such rules and regulations and all amendments, modifications, and repeals thereof shall be based upon investigation and available but reliable data relative to such limitations and standards.

(2) Each such rule, regulation, amendment, modification, and repeal shall specify the date when it shall become effective and while it remains in effect shall have the force and effect of law.

(3) Regardless of the provisions of this section or of other sections of the Game Law which empower the commission to set seasons on game birds, fish, or animals or provide the means and method by which such seasons are set or promulgated and regardless of the provisions of the Administrative Procedure Act, the commission may close or reopen any open season previously set on game birds, fish, or animals in all or any specific portion of the state. The commission shall only close or reopen such seasons by majority vote at a valid special meeting called under section 37-104 and other provisions of statutes regarding the holding of public meetings. Any closing or reopening of an open season previously set by the commission shall not be effective for at least twenty-four hours after such action by the commission. The commission shall make every effort to make available to all forms of the news media the information on any opening or closing of any open season on game birds, fish, or animals previously set. The commission may only use this special provision allowing the commission to open or close game bird, fish, or animal seasons previously set in emergency situations in which the continuation of the open season would result in grave danger to human life or property. The commission may also close or reopen any season established by a conservation order under the same provisions pertaining to closing and reopening seasons in this section.

(4) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1929, c. 112, III, § 1, p. 413; C.S.1929, § 37-301; Laws 1931, c. 70, § 1, p. 190; Laws 1937, c. 89, § 5, p. 292; C.S.Supp.,1941, § 37-301; Laws 1943, c. 94, § 5, p. 324; R.S. 1943, § 37-301; Laws 1957, c. 242, § 31, p. 844; Laws 1972, LB 777, § 4; Laws 1972, LB 1284, § 14; Laws 1975, LB 489, § 2; Laws 1981, LB 72, § 13; Laws 1989, LB 34, § 12; R.S.1943, (1993), § 37-301; Laws 1998, LB 922, § 72; Laws 1999, LB 176, § 14; Laws 2009, LB105, § 3.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

(b) FUNDS

37-327 Commission; fees; duty to establish; limit on increase.

(1) The commission shall establish fees for licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act and shall establish the fee required by section 37-562 as provided in such law, act, and section. The commission shall not increase any fee more than six percent per year, except that if a fee has not been increased by such percentage in the immediately preceding year, the difference between a six percent increase and the actual percentage increase in such preceding year may be added to the percentage increase in the following year. Such fees shall be collected and disposed of as provided in such law, act, and section. The commission shall, as provided in such law, act, and section, establish issuance fees to be retained by authorized agents of such licenses, permits, stamps, bands, registrations, and certificates under such law, act, and section. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(2) Prior to establishing any fee, the commission shall, at least thirty days prior to the hearing required in section 84-907, make the following information available for public review:

(a) The commission's policy on the minimum cash balance to be maintained in the fund in which the revenue from the fee being established is deposited and the justification in support of such policy;

(b) Monthly estimates of cash fund revenue, expenditures, and ending balances for the current fiscal year and the following two fiscal years for the fund in which the revenue from the fee being established is deposited. Estimates shall be prepared for both the current fee schedule and the proposed fee schedule; and

(c) A statement of the reasons for establishing the fee at the proposed level.

(3) The commission may adopt and promulgate rules and regulations to establish fees for expired licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act. The commis-

sion shall collect the fees and remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1993, LB 235, § 1; R.S.1943, (1996), § 81-814.02; Laws 1998, LB 922, § 85; Laws 1999, LB 176, § 16; Laws 2009, LB105, § 4.
Effective date August 30, 2009.

Cross References

State Boat Act, see section 37-1291.

ARTICLE 4
PERMITS AND LICENSES

(a) GENERAL PERMITS

Section
37-407. Hunting, fishing, and fur-harvesting permits; fees.
37-410. Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.
37-411. Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.
37-413. Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.
37-415. Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.
37-417. Lifetime permits; fees; disposition.
37-426. Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.
37-431. Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.
37-432. Stamps; money received from fees; administered by commission; purposes.
37-433. Violations; penalty; affirmative defense.
37-440. Display and issuance of permits; where procured; clerical fee.

(b) SPECIAL PERMITS AND LICENSES

37-447. Permit to hunt deer; regulation and limitation by commission; issuance; fee; violation; penalty.
37-449. Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.
37-450. Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.
37-451. Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee; violation; penalty.
37-455. Limited deer, antelope, wild turkey, or elk permit; conditions; fee.
37-455.01. Permit to hunt antelope, elk, deer, and wild turkey; auction or lottery permits; issuance; fee.
37-456. Limited antelope or elk permit; issuance; limitation.
37-457. Hunting wild turkey; permit required; fee; issuance.
37-477. Certain animals kept in captivity; permit required; exceptions; rules and regulations.
37-479. Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.
37-481. Certain wild animals; keeping in captivity; permit not required; when.
37-4,111. Permit to take paddlefish; issuance; fee.

(a) GENERAL PERMITS

37-407 Hunting, fishing, and fur-harvesting permits; fees.

The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to

the state for resident and nonresident hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident special two-day hunting permits issued for periods of two consecutive days between the Wednesday immediately preceding Thanksgiving Day and December 31 of the same calendar year and limited to one special two-day permit per applicant per year, as follows:

(1) Resident fees shall be (a) not more than thirteen dollars for hunting, (b) not more than seventeen dollars and fifty cents for fishing, (c) not more than eleven dollars and fifty cents for a three-day fishing permit, (d) not more than eight dollars for a one-day fishing permit, (e) not more than twenty-nine dollars for both fishing and hunting, and (f) not more than twenty dollars for fur harvesting; and

(2) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than eighty dollars for hunting and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (1)(a) of this section for hunting, (c) not more than thirty-five dollars for a special two-day hunting permit plus the cost of a habitat stamp, (d) not more than nine dollars for a one-day fishing permit, (e) not more than sixteen dollars and fifty cents for a three-day fishing permit, (f) not more than forty-nine dollars and fifty cents for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty dollars for both fishing and hunting and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (1)(e) of this section for both fishing and hunting.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5.
Effective date August 30, 2009.

37-410 Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.

(1) It shall be unlawful (a) for any person who has been issued a permit under the Game Law to lend or transfer his or her permit to another or for any person to borrow or use the permit of another, (b) for any person to procure a permit under an assumed name or to falsely state the place of his or her legal residence or make any other false statement in securing a permit, (c) for any person to knowingly issue or aid in securing a permit under the Game Law for any person not legally entitled thereto, (d) for any person disqualified for a permit to hunt, fish, or harvest fur with or without a permit during any period when such right has been forfeited or for which his or her permit has been revoked by the commission, or (e) for any nonresident under the age of sixteen years to receive a permit to harvest fur from any fur-bearing animal under the Game Law without presenting a written request therefor signed by his or her father, mother, or guardian.

(2) All children who are residents of the State of Nebraska and are under sixteen years of age shall not be required to have a permit to hunt, harvest fur, or fish.

(3) Any person violating subdivision (1)(a), (b), (c), or (d) of this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one hundred dollars for violations involving a fishing permit, at least one hundred fifty dollars for violations involving a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for violations involving an antelope permit, at least five hundred dollars for violations involving an elk permit, and at least one thousand dollars for violations involving a mountain sheep permit. Any person violating subdivision (1)(e) of this section shall be guilty of a Class III misdemeanor and shall be fined at least seventy-five dollars. Any permits purchased or used in violation of this section shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 8, p. 411; C.S.1929, § 37-208; Laws 1941, c. 72, § 8, p. 305; C.S.Supp.,1941, § 37-208; R.S.1943, § 37-208; Laws 1949, c. 102, § 1, p. 280; Laws 1959, c. 150, § 2, p. 569; Laws 1977, LB 40, § 173; Laws 1981, LB 72, § 6; Laws 1989, LB 34, § 9; R.S.1943, (1993), § 37-208; Laws 1998, LB 922, § 120; Laws 1999, LB 176, § 22; Laws 2003, LB 305, § 7; Laws 2009, LB105, § 6.
Effective date August 30, 2009.

37-411 Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.

(1) Unless issued a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur, except that a person may possess a fur-bearing animal or raw fur for up to ten days after expiration of a valid permit. Nonresident fur-harvesting permits may be issued only to residents of states which issue similar permits to residents of Nebraska;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or possess any migratory waterfowl without a federal migratory bird hunting stamp and a

Nebraska migratory waterfowl stamp as required under the Game Law and rules and regulations of the commission; or

(d) For any person who is sixteen years of age or older to take any kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from the waters of this state or possess the same except as provided in section 37-402. All nonresident anglers under sixteen years of age shall be accompanied by a person who has a valid fishing permit.

(2) It shall be unlawful for a nonresident to hunt or possess any kind of game birds or game animals, to take any kind of fish, mussel, turtle, or amphibian, or to harvest fur with a resident permit illegally obtained.

(3) It shall be unlawful for anyone to do or attempt to do any other thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(4) Any nonresident who hunts or has in his or her possession any wild mammal or wild bird shall first have a nonresident hunting permit as required under the Game Law and rules and regulations of the commission.

(5) Any nonresident who takes or has in his or her possession any wild turtle, mussel, or amphibian shall first have a nonresident fishing permit as required under the Game Law and rules and regulations of the commission.

(6) Except as provided in this section and sections 37-407 and 37-418, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

(7)(a) Any person violating this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least fifty dollars for failure to hold the appropriate stamp under subdivision (1)(c) of this section, at least one hundred dollars for failure to hold a fishing permit, at least one hundred fifty dollars for failure to hold a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for failure to hold an antelope permit, at least five hundred dollars for failure to hold an elk permit, and at least one thousand dollars for failure to hold a mountain sheep permit.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit proof of such purchase to the court.

Source: Laws 1929, c. 112, II, § 13, p. 412; C.S.1929, § 37-213; Laws 1937, c. 89, § 4, p. 292; Laws 1941, c. 72, § 3, p. 301; C.S.Supp.,1941, § 37-213; R.S.1943, § 37-213; Laws 1949, c. 102, § 2, p. 280; Laws 1957, c. 139, § 5, p. 466; Laws 1959, c. 154, § 1, p. 580; Laws 1959, c. 150, § 4, p. 571; Laws 1959, c. 149, § 2, p. 565; Laws 1961, c. 169, § 2, p. 502; Laws 1961, c. 171, § 1, p. 511; Laws 1965, c. 197, § 1, p. 598; Laws 1965, c. 194, § 2, p. 592; Laws 1967, c. 216, § 5, p. 581; Laws 1972, LB 777, § 2; Laws 1973, LB 331, § 3; Laws 1977, LB 40, § 176; Laws 1978, LB 75, § 1; Laws 1979, LB 553, § 2; Laws 1979, LB 435, § 1; Laws 1981, LB 72, § 9; Laws 1987, LB 171, § 1; Laws 1987, LB 105, § 4; Laws 1989, LB 34, § 11; Laws 1989, LB 127, § 1; Laws 1993, LB 235, § 10; Laws 1996, LB 584, § 5; R.S.Supp.,1996, § 37-213; Laws 1998, LB 922, § 121; Laws

1999, LB 176, § 23; Laws 1999, LB 404, § 23; Laws 2003, LB 305, § 8; Laws 2005, LB 162, § 3; Laws 2009, LB105, § 7. Effective date August 30, 2009.

Cross References

Predatory animals, subject to destruction, see sections 23-358 and 81-2,236.

37-413 Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.

(1) For the purpose of establishing and administering a mandatory firearm hunter education program for persons twelve through twenty-nine years of age who hunt with a firearm or crossbow any species of game, game birds, or game animals, the commission shall provide a program of firearm hunter education training leading to obtaining a certificate of successful completion in the safe handling of firearms and shall locate and train volunteer firearm hunter education instructors. The program shall provide a training course having a minimum of (a) ten hours of classroom instruction or (b) independent study on the part of the student sufficient to pass an examination given by the commission followed by such student's participation in a minimum of four hours of practical instruction. The program shall provide instruction in the areas of safe firearms use, shooting and sighting techniques, hunter ethics, game identification, and conservation management. The commission shall issue a firearm hunter education certificate of successful completion to persons having satisfactorily completed a firearm hunter education course accredited by the commission and shall print, purchase, or otherwise acquire materials as necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such programs.

(2) It shall be unlawful for any person twenty-nine years of age or younger to hunt with a firearm or crossbow any species of game, game birds, or game animals except:

(a) A person under the age of twelve years who is accompanied by a person nineteen years of age or older having a valid hunting permit;

(b) A person twelve through twenty-nine years of age who has on his or her person proof of successful completion of a hunter education course or a firearm hunter education course issued by the person's state or province of residence or by an accredited program recognized by the commission; or

(c) A person twelve through twenty-nine years of age who has on his or her person the appropriate hunting permit and an apprentice hunter education exemption certificate issued by the commission pursuant to subsection (3) of this section and who is accompanied as described in subsection (4) of this section.

(3) An apprentice hunter education exemption certificate may be issued to a person twelve through twenty-nine years of age, once during such person's lifetime with one renewal, upon payment of a fee of five dollars and shall expire at midnight on December 31 of the year for which the apprentice hunter education exemption certificate is issued. The commission may adopt and promulgate rules and regulations allowing for the issuance of apprentice hunter education exemption certificates. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the State Game Fund.

(4) For purposes of this section, accompanied means under the direct supervision of a person nineteen years of age or older having a valid hunting permit who is at all times in unaided visual and verbal communication of no more than two persons having an apprentice hunter education exemption certificate. This subsection does not prohibit the use by such person nineteen years of age or older of ordinary prescription eyeglasses or contact lenses or ordinary hearing instruments.

Source: Laws 1969, c. 766, § 1, p. 2903; Laws 1974, LB 865, § 1; Laws 1996, LB 584, § 1; R.S.Supp.,1996, § 37-104; Laws 1998, LB 922, § 123; Laws 2001, LB 111, § 3; Laws 2003, LB 305, § 9; Laws 2008, LB690, § 1; Laws 2009, LB195, § 4.
Effective date August 30, 2009.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime fishing permit shall be not more than three hundred forty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than five hundred ninety-eight dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than twelve hundred fifty dollars, the fee for a nonresident lifetime fishing permit shall be not more than eight hundred fifty dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB 176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2;

Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8.
Effective date August 30, 2009.

37-417 Lifetime permits; fees; disposition.

Fees received for lifetime permits under the Game Law shall be credited to the State Game Fund. Twenty-five percent of the fees for lifetime permits shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission.

Source: Laws 1983, LB 173, § 3; Laws 1995, LB 7, § 32; R.S.Supp.,1996, § 37-202.03; Laws 1998, LB 922, § 127; Laws 2009, LB105, § 9.
Effective date August 30, 2009.

Cross References

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

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2)(a) The commission may issue a lifetime habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime habitat stamp shall be twenty times the fee required in subsection (5) of this section for an annual habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(b) The commission may issue a lifetime Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a lifetime Nebraska migratory waterfowl stamp shall be twenty times the fee

required in subsection (5) of this section for an annual Nebraska migratory waterfowl stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement Nebraska lifetime migratory waterfowl stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(3) The commission may issue a lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime aquatic habitat stamp shall be not more than two hundred dollars as established by the commission pursuant to section 37-327. Payment of such fee shall be made in a lump sum at the time of application. A lifetime aquatic habitat stamp shall not be made invalid by reason of the holder subsequently residing outside the state. A replacement lifetime aquatic habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp. A habitat stamp shall be issued upon the payment of a fee of twenty dollars per stamp. An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of ten dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits and a fee of not more than two hundred dollars for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund. A Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. The commission shall establish the fees pursuant to section 37-327.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp.,1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10.
Effective date August 30, 2009.

37-431 Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.

(1)(a) The Nebraska Habitat Fund is created. The commission shall remit fees received for habitat stamps and Nebraska migratory waterfowl stamps to the State Treasurer for credit to the Nebraska Habitat Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Up to twenty-five percent of the annual receipts of the fund may be spent by the commission to provide access to private wildlife lands and habitat areas, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations of the Legislature for its approval.

(b) Fees received for lifetime habitat stamps and lifetime Nebraska migratory waterfowl stamps under the Game Law shall be credited to the Nebraska Habitat Fund. Twenty-five percent of the fees for such stamps shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(2)(a) The Nebraska Aquatic Habitat Fund is created. The commission shall remit fees received for aquatic habitat stamps and one dollar of the one-day fishing permit fee as provided in section 37-426 to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Up to thirty percent of the annual receipts of the fund may be spent by the commission to provide public waters angler access enhancements and to provide funding for the administration of programs related to aquatic habitat and public waters angler access enhancements, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations and the Committee on Natural Resources of the Legislature for their approval.

(b) Fees received for lifetime aquatic habitat stamps shall be credited to the Nebraska Aquatic Habitat Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(3) The secretary of the commission and any county clerk or public official designated to sell habitat stamps, aquatic habitat stamps, or Nebraska migratory waterfowl stamps shall be liable upon their official bonds or equivalent commercial insurance policy for failure to remit the money from the sale of the stamps, as required by sections 37-426 to 37-433, coming into their hands. Any agent who receives stamp fees and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. Any agent who purposefully fails to remit such fees with the intention of converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1976, LB 861, § 13; Laws 1983, LB 174, § 7; Laws 1996, LB 584, § 15; R.S.Supp.,1996, § 37-216.07; Laws 1998, LB 922,

§ 141; Laws 1999, LB 176, § 31; Laws 2001, LB 111, § 8; Laws 2004, LB 884, § 19; Laws 2005, LB 162, § 12; Laws 2007, LB299, § 6; Laws 2009, LB105, § 11.
Effective date August 30, 2009.

Cross References

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

37-432 Stamps; money received from fees; administered by commission; purposes.

(1) All money received from the sale of habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition of, on a willing-seller willing-buyer basis only, leasing of, development of, management of, enhancement of, access to, and taking of easements on wildlife lands and habitat areas. Such funds may be used in whole or in part for the matching of federal funds. Up to twenty-five percent of the money received from the sale of habitat stamps may be used to provide access to private wildlife lands and habitat areas.

(2) All money received from the sale of aquatic habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission and shall be used for the maintenance and restoration of existing aquatic habitat if maintenance and restoration is practicable, for the enhancement of existing aquatic habitat, for public waters angler access enhancements, and for administration of programs related to aquatic habitat and public waters angler access enhancements. Such funds may be used in whole or in part for the matching of federal funds. Up to thirty percent of the money received from the sale of aquatic habitat stamps may be used to provide public waters angler access enhancements and to provide funding for administration of programs related to aquatic habitat and public waters angler access enhancements.

(3) All money received from the sale of Nebraska migratory waterfowl stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition on a willing-seller willing-buyer basis only, leasing, development, management, and enhancement of and taking of easements on migratory waterfowl habitat. Such funds may be used in whole or in part for the matching of federal funds.

Source: Laws 1976, LB 861, § 14; Laws 1983, LB 174, § 8; Laws 1996, LB 584, § 16; R.S.Supp.,1996, § 37-216.08; Laws 1998, LB 922, § 142; Laws 2005, LB 162, § 13; Laws 2009, LB105, § 12.
Effective date August 30, 2009.

37-433 Violations; penalty; affirmative defense.

Unless otherwise provided in sections 37-426 to 37-433, any person who violates any provision of sections 37-426 to 37-433 or who violates or fails to comply with any rule or regulation thereunder shall be guilty of a Class V misdemeanor and shall be fined at least fifty dollars upon conviction.

It shall be an affirmative defense to prosecution for any violation of sections 37-426 to 37-433 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was

unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Source: Laws 1976, LB 861, § 15; Laws 1977, LB 41, § 7; Laws 1983, LB 174, § 9; Laws 1996, LB 584, § 17; R.S.Supp.,1996, § 37-216.09; Laws 1998, LB 922, § 143; Laws 2009, LB105, § 13.
Effective date August 30, 2009.

37-440 Display and issuance of permits; where procured; clerical fee.

(1) The commission shall prescribe the type and design of permits and the method of display of permits for motor vehicles. The commission may provide for the electronic issuance of permits and may enter into contracts to procure necessary services and supplies for the electronic issuance of permits.

(2) The permits may be procured from the central and district offices of the commission, at areas of the Nebraska state park system where commission offices are maintained, from self-service vending stations at designated park areas, from designated commission employees, through Internet sales from the commission's web site, from appropriate offices of county government, and from various private persons, firms, or corporations designated by the commission as permit agents. The commission and county offices or private persons, firms, or corporations designated by the commission as permit agents shall be entitled to collect and retain a fee of not less than twenty-five cents and not more than thirty-five cents, as established by the commission pursuant to section 37-327, for each permit as reimbursement for the clerical work of issuing the permits and remitting therefor. The commission shall be entitled to collect and retain a fee of one dollar for each permit sold through its web site as reimbursement for the clerical work and postage associated with issuing the permit.

Source: Laws 1977, LB 81, § 8; Laws 1980, LB 723, § 5; Laws 1993, LB 235, § 34; R.S.1943, (1993), § 37-1108; Laws 1998, LB 922, § 150; Laws 1999, LB 176, § 37; Laws 2002, LB 1003, § 21; Laws 2009, LB105, § 14.
Effective date August 30, 2009.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and prescribe and adopt and promulgate rules and regulations and limitations for the hunting, transportation, and possession of deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may specify by regulation the information to be required on applications for such permits. Regulations and limitations for the hunting, transportation, and possession of deer may include, but not be limited to, regulations and limitations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such regulations and limitations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be disposed of in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine who shall be eligible to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than two hundred fourteen dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section.

(b) The fee for a statewide buck-only permit shall be no more than two and one-half times the amount of a regular deer permit. The commission may provide different fees for different species.

(5) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws

1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15. Effective date August 30, 2009.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer multiple-year permits or combinations of permits at reduced rates.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than one hundred forty-nine dollars and fifty cents for nonresidents for each permit issued under this section except as provided in subsection (4) of this section.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16. Effective date August 30, 2009.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than eight dollars and fifty cents for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred forty-nine dollars and fifty cents for each resident elk permit issued and not to exceed three times such amount for each nonresident elk permit issued.

(3) A person may obtain only one antlered-elk permit in his or her lifetime except for a limited permit to hunt elk pursuant to section 37-455.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17. Effective date August 30, 2009.

37-451 Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting mountain sheep and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Such rules and regulations shall include provisions allowing persons who find dead mountain sheep, or any part of a mountain sheep, to turn over to the commission such mountain sheep or part of a mountain sheep. The commission may dispose of such mountain sheep or part of a mountain sheep as it deems reasonable and prudent. Except as otherwise provided in this section, the permits shall be issued to residents of Nebraska.

(2) The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than twenty-five dollars for permits issued only to residents. Any number of resident-only permits, as authorized by the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee.

(3) No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain sheep, elk, and deer.

(4) If the commission determines to limit the number of permits issued for any or all management units, the commission shall by rule and regulation determine eligibility requirements for the permits.

(5) A person may obtain only one mountain sheep permit in his or her lifetime.

(6) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 161; Laws 2008, LB1162, § 5; Laws 2009, LB105, § 18.
Effective date August 30, 2009.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder and his or her immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to

37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. Only a person who is a qualifying landowner or leaseholder and such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in the rules and regulations of the commission. For purposes of this section, immediate family means and is limited to a husband and wife and their children or siblings sharing ownership in the property.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may adopt and promulgate rules and regulations for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season.

The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19.
Effective date August 30, 2009.

37-455.01 Permit to hunt antelope, elk, deer, and wild turkey; auction or lottery permits; issuance; fee.

The commission may issue auction or lottery permits for up to five permits each for antelope and elk and up to twenty-five permits each for deer and wild turkey during the calendar year. Included in that number are single species and combination species permits and shared revenue permits that may be issued by the commission. The shared revenue permits may be issued under agreements with nonprofit conservation organizations and may be issued by auction or lottery, with the commission receiving at least eighty percent of any profit realized. The commission shall by rule and regulation adopt limitations for any

such permits that are issued. The auction or lottery shall be conducted according to rules and regulations adopted and promulgated by the commission. The commission shall adopt and promulgate rules and regulations to set a nonrefundable lottery application fee for each type of single species or combination species permit offered directly through the commission.

Source: Laws 2005, LB 162, § 18; Laws 2009, LB105, § 20.
Effective date August 30, 2009.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp.,1996, § 37-215.08; Laws 1998, LB 922, § 166; Laws 2009, LB105, § 21.
Effective date August 30, 2009.

37-457 Hunting wild turkey; permit required; fee; issuance.

(1) The commission may issue permits for hunting wild turkey and prescribe and establish regulations and limitations for the hunting, transportation, and possession of wild turkey. The commission may offer multiple-year permits or combinations of permits at reduced rates. The number of such permits may be limited as provided by the regulations of the commission, but the permits shall be disposed of in an impartial manner. Such permits may be issued to allow wild turkey hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting would not be detrimental to the proper preservation of wildlife in such forest, reserves, or areas.

(2) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-three dollars for residents and not more than ninety-five dollars for nonresidents for each permit issued under this section except as provided in subsection (5) of this section.

(3) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units.

(4) The provisions of section 37-447 for the distribution of deer permits also may apply to the distribution of wild turkey permits. No permit to hunt wild turkey shall be issued without payment of the fee required by this section.

(5) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth wild turkey permit.

Source: Laws 1961, c. 172, § 1, p. 513; Laws 1969, c. 292, § 2, p. 1064; Laws 1976, LB 861, § 16; Laws 1993, LB 235, § 17; R.S.1943, (1993), § 37-227; Laws 1998, LB 922, § 167; Laws 1999, LB 176,

§ 44; Laws 2003, LB 306, § 7; Laws 2005, LB 162, § 19; Laws 2007, LB299, § 11; Laws 2009, LB105, § 22.
Effective date August 30, 2009.

37-477 Certain animals kept in captivity; permit required; exceptions; rules and regulations.

(1) No person shall keep in captivity in this state any wild birds, any wild mammals, any nongame wildlife in need of conservation as determined by the commission under section 37-805, or any wildlife determined to be an endangered or threatened species under the Endangered Species Act or section 37-806 without first having obtained a permit to do so as provided by section 37-478 or 37-479.

(2) Except as provided in subsection (3) of this section, no person shall keep in captivity in this state any wolf, any skunk, or any member of the families Felidae and Ursidae. This subsection shall not apply to (a) the species Felis domesticus, (b) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America, or (c) any person who holds a captive wildlife permit issued pursuant to section 37-479 and who raises Canada Lynx (Lynx canadensis) or bobcats (Lynx rufus) solely for the purpose of producing furs for sale to individuals or businesses or for the purpose of producing breeding stock for sale to persons engaged in fur production.

(3) Any person legally holding in captivity, on March 1, 1986, any animal subject to the prohibition contained in subsection (2) of this section shall be allowed to keep the animal for the duration of its life. Such animal shall not be traded, sold, or otherwise disposed of without written permission from the commission.

(4) The commission shall adopt and promulgate rules and regulations governing the purchase, possession, propagation, sale, and barter of wild birds, wild mammals, and wildlife in captivity.

Source: Laws 1957, c. 151, § 1, p. 490; Laws 1971, LB 733, § 9; Laws 1986, LB 558, § 1; Laws 1987, LB 379, § 1; R.S.1943, (1993), § 37-713; Laws 1998, LB 922, § 187; Laws 1999, LB 176, § 56; Laws 2009, LB105, § 23.
Effective date August 30, 2009.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commis-

sion. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-701.03.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24.
Effective date August 30, 2009.

37-481 Certain wild animals; keeping in captivity; permit not required; when.

Sections 37-477 to 37-480 shall not be construed to require the obtaining of a permit for the purpose of keeping in captivity wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 or for the purpose of purchasing, possessing, propagating, selling, bartering, or otherwise disposing of any wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 by (1) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America or (2) any circus licensed by the United States Department of Agriculture.

Source: Laws 1957, c. 151, § 5, p. 491; Laws 1969, c. 296, § 1, p. 1069; Laws 1986, LB 558, § 3; R.S.1943, (1993), § 37-717; Laws 1998, LB 922, § 191; Laws 1999, LB 176, § 60; Laws 2009, LB105, § 25.
Effective date August 30, 2009.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26.
Effective date August 30, 2009.

ARTICLE 5
REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section
37-501. Game and fish; bag and possession limit; violation; penalty.
37-504. Violations; penalties; exception.
37-507. Game bird, game animal, or game fish; abandonment or needless waste; penalty.

(b) GAME AND BIRDS

37-513. Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.
37-514. Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.
37-523. Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.
37-528. Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.

(a) GENERAL PROVISIONS

37-501 Game and fish; bag and possession limit; violation; penalty.

Except as otherwise provided by the Game Law or rules and regulations of the commission, it shall be unlawful for any person in any one day to take or have in his or her possession at any time a greater number of game birds, game animals, or game fish of any one kind than as established pursuant to section 37-314. Any person violating this section shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least two hundred dollars for violations relating to turkeys, small game animals, or game fish.

Source: Laws 1929, c. 112, III, § 4, p. 416; C.S.1929, § 37-304; Laws 1933, c. 69, § 1, p. 308; Laws 1937, c. 89, § 7, p. 294; C.S.Supp.,1941, § 37-304; R.S.1943, § 37-303; Laws 1989, LB 34, § 13; R.S.1943, (1993), § 37-303; Laws 1998, LB 922, § 221; Laws 2009, LB105, § 27.
Effective date August 30, 2009.

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any elk, deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for a violation involving elk and at least two hundred dollars for a violation involving deer, antelope, swan, or wild turkey.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class II misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a

Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28.
Effective date August 30, 2009.

37-507 Game bird, game animal, or game fish; abandonment or needless waste; penalty.

Any person who at any time takes any game bird, game animal, or game fish other than baitfish in this state and who intentionally leaves or abandons such bird, animal, or fish or an edible portion thereof resulting in wanton or needless waste or otherwise intentionally allows it or an edible portion thereof to be wantonly or needlessly wasted or fails to dispose thereof in a reasonable and sanitary manner shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 150, § 11, p. 575; Laws 1977, LB 40, § 197; R.S.1943, (1993), § 37-525; Laws 1998, LB 922, § 227; Laws 2009, LB105, § 29.
Effective date August 30, 2009.

(b) GAME AND BIRDS

37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 220, § 1; Laws 1975, LB 142, § 4; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30.
Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB5, section 1, with LB105, section 30, to reflect all amendments.

37-514 Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.

(1) Except as provided in section 37-4,107, it shall be unlawful to hunt any wildlife by projecting or casting the rays of a spotlight, headlight, or other artificial light attached to or used from a vehicle or boat in any field, pasture, woodland, forest, prairie, water area, or other area which may be inhabited by wildlife while having in possession or control, either singly or as one of a group of persons, any firearm or bow and arrow.

(2) Nothing in this section shall prohibit (a) the hunting on foot of raccoon with the aid of a handlight, (b) the hunting of species of wildlife not protected by the Game Law in the protection of property by landowners or operators or their regular employees on land under their control on foot or from a motor vehicle with the aid of artificial light, or (c) the taking of nongame fish by means of bow and arrow from a vessel with the aid of artificial light.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred fifty dollars upon conviction.

Source: Laws 1998, LB 922, § 234; Laws 1999, LB 176, § 70; Laws 2009, LB105, § 31.
Effective date August 30, 2009.

37-523 Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

(1) It shall be unlawful to hunt or trap any form of wild mammal or wild bird within a two-hundred-yard radius of an inhabited dwelling or livestock feedlot,

or to trap within a two-hundred-yard radius of any passage used by livestock to pass under any highway, road, or bridge.

(2) This section shall not prohibit any owner, tenant, or operator or his or her guests from hunting or trapping any form of wild mammal or wild bird within such radius if the area is under his or her ownership or control. This section shall not prohibit duly authorized personnel of any county, city, or village health or animal control department from trapping with a humane live box trap or pursuing any form of wild mammal or wild bird, when conducting such activities within the scope of the authorization, within such radius if the area is under the jurisdiction of the county, city, or village.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1967, c. 214, § 1, p. 575; Laws 1974, LB 779, § 2; Laws 1983, LB 24, § 1; R.S.1943, (1993), § 37-526; Laws 1998, LB 922, § 243; Laws 2009, LB105, § 32.
Effective date August 30, 2009.

37-528 Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.

(1) For purposes of this section, drug means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the commission.

(2) Except with written authorization from the secretary of the commission or his or her designee or as otherwise provided by law, a person shall not administer a drug to any wildlife under the jurisdiction of the commission, including, but not limited to, a drug used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

(3) This section does not prohibit the treatment of wildlife to prevent disease or the treatment of sick or injured wildlife by a licensed veterinarian, a holder of a federal migrating bird rehabilitation permit, a holder of a permit regulated under the authority of section 37-316, a holder of a permit regulated under the authority of section 37-4,106, or a holder of a license regulated under the authority of section 37-4,108.

(4) This section shall not be construed to limit employees of agencies of the state or the United States or employees of an animal control facility or animal shelter licensed under section 54-627 in the performance of their official duties related to public health or safety, wildlife management, or wildlife removal, except that a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection (2) of this section.

(5) A conservation officer may take possession or dispose of any wildlife under the jurisdiction of the commission that the officer reasonably believes has been administered a drug in violation of this section.

(6) A person who violates this section is guilty of a Class IV misdemeanor.

Source: Laws 2009, LB105, § 33.
Effective date August 30, 2009.

ARTICLE 6
ENFORCEMENT

Section
37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.
37-614. Revocation and suspension of permits; grounds.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

(a) Fifteen thousand dollars for each mountain sheep;

(b) Five thousand dollars for each elk with a minimum of twelve total points and one thousand five hundred dollars for any other elk;

(c) Five thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least eighteen inches, one thousand dollars for any other antlered whitetail deer, and two hundred fifty dollars for each antlerless whitetail deer and whitetail doe deer;

(d) Five thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-four inches and one thousand dollars for any other mule deer;

(e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;

(f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;

(g) Five hundred dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

(h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;

(i) Five thousand dollars for each eagle;

(j) One hundred dollars for each wild turkey;

(k) Twenty-five dollars for each dove;

(l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;

(m) Fifty dollars for each wild bird not otherwise listed in this subsection;

(n) Seven hundred fifty dollars for each swan or paddlefish;

(o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;

(p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;

(q) Twenty-five dollars for each other game fish; and

(r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34.
Effective date August 30, 2009.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law or the rules and regulations of the commission not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2.
Effective date August 30, 2009.

ARTICLE 7

RECREATIONAL LANDS

(c) PRIVATELY OWNED LANDS

Section
37-727. Hunting; privately owned land; violations; penalty.

(c) PRIVATELY OWNED LANDS

37-727 Hunting; privately owned land; violations; penalty.

Any person violating section 37-722 or sections 37-724 to 37-726 shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1963, c. 199, § 5, p. 647; Laws 1977, LB 40, § 178; R.S.1943, (1993), § 37-213.06; Laws 1998, LB 922, § 341; Laws 2009, LB105, § 35.
Effective date August 30, 2009.

ARTICLE 12

STATE BOAT ACT

Section
37-1201. Act, how cited; declaration of policy.
37-1211. Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.
37-1241.07. Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.
37-1241.08. Personal watercraft; sections; applicability.
37-1277. Acquisition of motorboat; requirements.
37-1279. Certificate of title; issuance; form; county clerk or designated county official; duties; filing.
37-1280.01. County treasurer; assume powers and duties of county clerk; when.
37-1282. Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.
37-1282.01. Printed certificate of title; when issued.
37-1283. New certificate; when issued; proof required; processing of application.

Section
37-1287. Fees; disposition.
37-1290. Security interest perfected prior to January 1, 1997; treatment; notation of lien.

37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1.
Effective date August 30, 2009.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB49, section 3, with LB202, section 1, to reflect all amendments.

37-1211 Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.

(1) Except as provided in subsections (2) and (3) of this section and sections 37-1249 and 37-1250, every motorboat on the waters of this state shall be numbered and no person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with the State Boat Act or in accordance with the laws of another state if the commission has by regulation approved the numbering system of such state and unless the certificate of number awarded to such vessel is in full force and effect and the identifying number set forth in the certificate of number is displayed and legible on each side of the forward half of the vessel.

(2) The owner of each motorboat may operate or give permission for the operation of such vessel for thirty days from the date the vessel was acquired in anticipation of the vessel being numbered. A duly executed bill of sale, certificate of title, or other satisfactory evidence of the right of possession of the vessel as prescribed by the Department of Motor Vehicles must be available for inspection at all times from the operator of the vessel.

(3) The owner or his or her invitee who operates a personal watercraft on any body of water (a) which is entirely upon privately owned land owned by only one person or one family and, if leased, leased by only one person or one family, (b) which does not connect by any permanent or intermittent inflow or outflow with other water outside such land, and (c) which is not operated on a commercial basis for profit may operate any personal watercraft on such body of water without complying with subsection (1) of this section.

Source: Laws 1978, LB 21, § 11; Laws 1995, LB 376, § 1; Laws 1998, LB 922, § 394; Laws 2009, LB202, § 2.
Effective date August 30, 2009.

37-1241.07 Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.

(1) The owner of a boat livery, or his or her agent or employee, shall not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.

(2) Except as provided in subdivision (1)(a) of section 37-1241.06, a person younger than eighteen years of age may operate a motorboat or personal watercraft rented, leased, or hired by a person eighteen years of age or older if the person younger than eighteen years of age holds a valid boating safety certificate issued under section 37-1241.06.

(3) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall list on each rental or lease agreement for a motorboat the name and age of each person who is authorized to operate the motorboat. The person to whom the motorboat is rented or leased shall ensure that only those persons who are listed as authorized operators are allowed to operate the motorboat.

(4) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall display for review by each person who is authorized to operate the motorboat a summary of the statutes and the rules and regulations governing the operation of a motorboat and instructions regarding the safe operation of the motorboat. Each person who is listed as an authorized operator of the motorboat shall review the summary of the statutes, rules, regulations, and instructions and sign a statement indicating that he or she has done so prior to leaving the rental or leasing office.

Source: Laws 1999, LB 176, § 108; Laws 2003, LB 305, § 23; Laws 2005, LB 21, § 1; Laws 2009, LB105, § 36.
Effective date August 30, 2009.

37-1241.08 Personal watercraft; sections; applicability.

Sections 37-1241.01 to 37-1241.07 shall not apply to a person participating in a regatta, race, marine parade, tournament, or exhibition which has been authorized or permitted by the commission pursuant to sections 37-1262 and 37-1263 or is otherwise exempt from the provisions of the State Boat Act.

Source: Laws 1999, LB 176, § 109; Laws 2009, LB105, § 37.
Effective date August 30, 2009.

37-1277 Acquisition of motorboat; requirements.

(1) Except as provided in subsections (2) and (3) of this section, no person acquiring a motorboat from the owner thereof, whether the owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such motorboat until he or she has physical possession of the motorboat and a certificate of title or a manufacturer's or importer's certificate with assignments on the certificate to show title in the purchaser or an instrument in writing required by section 37-1281. No waiver or estoppel shall operate in favor of such person against a person having physical possession of the motorboat and the certificate of title, the manufacturer's or importer's certificate, or an instrument in writing required by section 37-1281. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motorboat sold, disposed of, mortgaged, or encumbered unless there is compliance with this section.

(2) A motorboat manufactured before November 1, 1972, is exempt from the requirement to have a certificate of title. If a person acquiring a motorboat which is exempt from the requirement to have a certificate of title desires to acquire a certificate of title for the motorboat, the person may apply for a certificate of title pursuant to section 37-1278.

(3) A motorboat owned by the United States, the State of Nebraska, or an agency or political subdivision of either is exempt from the requirement to have a certificate of title. A person other than an agency or political subdivision acquiring such a motorboat which is not covered under subsection (2) of this section shall apply for a certificate of title pursuant to section 37-1278. The person shall show proof of purchase from a governmental agency or political subdivision to obtain a certificate of title.

(4) Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a motorboat.

Source: Laws 1994, LB 123, § 5; Laws 1996, LB 464, § 13; Laws 1997, LB 720, § 4; Laws 2009, LB202, § 3.
Effective date August 30, 2009.

37-1279 Certificate of title; issuance; form; county clerk or designated county official; duties; filing.

(1) The county clerk or designated county official shall issue the certificate of title. The county clerk or designated county official shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county clerk, designated county official, or the Department of Motor Vehicles. Each county shall issue and file certificates of title using the vehicle titling and registration computer system.

(2) Each county clerk or designated county official of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4.
Effective date August 30, 2009.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280.01 County treasurer; assume powers and duties of county clerk; when.

On and after the implementation date designated under section 23-186 by the Director of Motor Vehicles, the county treasurer shall have all of the powers and duties of the county clerk as specified under the State Boat Act.

Source: Laws 2009, LB49, § 4.
Effective date August 30, 2009.

37-1282 Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.

(1) The Department of Motor Vehicles shall implement an electronic title and lien system for motorboats no later than January 1, 2011. The Director of Motor Vehicles shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a motorboat may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a motorboat, any lien filed electronically shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a motorboat or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motorboat dealers and lienholders who participate in the system by a method determined by the director.

(2) The provisions of article 9, Uniform Commercial Code, shall not be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a motorboat. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a motorboat, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of the instrument or, in the case of a certificate of title, if a notation of same has been made electronically as prescribed in subsection (1) of this section or by the county clerk, the designated county official, or the department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants, but otherwise shall not be valid against them, except that during any period in which a motorboat is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is in the business of selling motorboats, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in the motorboat created by such person or corporation as debtor without the notation of lien on the instrument of title. A

buyer at retail from a dealer of any motorboat in the ordinary course of business shall take the motorboat free of any security interest.

(3) All liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in which the same are noted on the certificate of title by the county clerk, the designated county official, or the department. Exposure for sale of any motorboat by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on the motorboat shall not render the same void or ineffective as against the creditors of the owner or holder of subsequent liens, security agreements, or encumbrances upon the motorboat.

(4) Upon presentation of a security agreement, trust receipt, conditional sales contract, or similar instrument to the county clerk, designated county official, or department together with the certificate of title and the fee prescribed by section 37-1287, the holder of such instrument may have a notation of the lien made on the face of the certificate of title. The owner of a motorboat may present a valid out-of-state certificate of title issued to such owner for such motorboat with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the new certificate of title issued pursuant to section 37-1278 without presenting a copy of the lien instrument. The county clerk, the designated county official, or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of office. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk, the designated county official, or the department shall also indicate by appropriate notation and on such instrument itself the fact that the lien has been noted on the certificate of title.

(5) The county clerk, the designated county official, or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, the designated county official, or the department, within fifteen days from the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county clerk, the designated county official, or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, the designated county official, or the department for the purpose of showing such other lien on the certificate of title within fifteen days from the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(6) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 37-1287, and, if a printed certificate of title exists, the presentation of the certificate of title, the county clerk, designated county official, or department shall make notation of such other lien. If the

certificate of title is not an electronic certificate of title record, the county clerk, designated county official, or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, designated county official, or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, designated county official, or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(7) When the lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the face of the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk, the designated county official, or the department which shall note the cancellation of the lien on the face of the certificate of title and on the records of the office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk, the designated county official, or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of the lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county clerk, designated county official, or department. The department shall note the cancellation of lien and, if no other liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the certificate of title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 1994, LB 123, § 10; Laws 1996, LB 464, § 18; Laws 1999, LB 550, § 7; Laws 2008, LB756, § 1; Laws 2009, LB202, § 5. Effective date August 30, 2009.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1282.01 Printed certificate of title; when issued.

Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, a lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the motorboat relocates to another state or country or if requested for any other purpose approved by the Department of Motor Vehicles. Upon proof by the owner that a lienholder has not provided the

requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

Source: Laws 2009, LB202, § 6.
Effective date August 30, 2009.

37-1283 New certificate; when issued; proof required; processing of application.

(1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage or repair charges, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of the county in which the last certificate of title to the motorboat was issued or the Department of Motor Vehicles if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be. If from the records in the office of the county clerk, the designated county official, or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7.
Effective date August 30, 2009.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1287 Fees; disposition.

(1) The county clerks, the designated county officials, or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county clerks or designated county officials shall retain for the county four

dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county clerks, the designated county officials, or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county clerks, the designated county officials, or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county clerks, the designated county officials, or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county clerks or designated county officials shall remit fees due the State Treasurer for credit to the General Fund under this section monthly and not later than the fifth day of the month following collection. The county clerks or designated county officials shall remit fees not due to the State Treasurer for credit to the General Fund to their respective county treasurers who shall credit the fees to the county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8.
Effective date August 30, 2009.

37-1290 Security interest perfected prior to January 1, 1997; treatment; notation of lien.

(1) Any security interest in a motorboat perfected prior to January 1, 1997, shall continue to be perfected (a) until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) until a motorboat certificate of title is issued and a lien noted pursuant to section 37-1282.

(2) Any lien noted on the face of a motorboat certificate of title or on an electronic certificate of title record after January 1, 1997, pursuant to subsection (1) of this section, on behalf of the holder of a security interest in the motorboat, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a motorboat certificate of title shall, upon request, surrender the motorboat certificate of title to a holder of a security interest in the motorboat which was perfected prior to January 1, 1997, to permit notation of a lien on the motorboat certificate of title and shall do such other acts as may be required to permit such notation.

(4) The assignment, release, or satisfaction of a security interest in a motorboat shall be governed by the laws under which it was perfected.

Source: Laws 1994, LB 123, § 18; Laws 1999, LB 550, § 8; Laws 2009, LB202, § 9.
Effective date August 30, 2009.

ARTICLE 13
NEBRASKA SHOOTING RANGE PROTECTION ACT

Section
37-1301. Act, how cited.
37-1302. Terms, defined.
37-1303. Rules and regulations; shooting range performance standards; review.
37-1304. Existing shooting range; effect of zoning provisions.
37-1305. Existing shooting range; effect of noise provisions.
37-1306. Discharge of firearm at shooting range; how treated.
37-1307. Existing shooting range; permitted activities.
37-1308. Hours of operation.
37-1309. Presumption with respect to noise.
37-1310. Regulation of location and construction; limit on taking of property.

37-1301 Act, how cited.

Sections 37-1301 to 37-1310 shall be known and may be cited as the Nebraska Shooting Range Protection Act.

Source: Laws 2009, LB503, § 1.
Effective date August 30, 2009.

37-1302 Terms, defined.

For purposes of the Nebraska Shooting Range Protection Act:

(1) Firearm has the same meaning as in section 28-1201;

(2) Person means an individual, association, proprietorship, partnership, corporation, club, political subdivision, or other legal entity;

(3) Shooting range means an area or facility designated or operated primarily for the use of firearms or archery and which is operated in compliance with the act and the shooting range performance standards. Shooting range excludes shooting preserves or areas used for law enforcement or military training; and

(4) Shooting range performance standards means the revised edition of the National Rifle Association's range source book titled A Guide To Planning And Construction adopted by the National Rifle Association, as such book existed on January 1, 2009, for the safe operation of shooting ranges.

Source: Laws 2009, LB503, § 2.
Effective date August 30, 2009.

37-1303 Rules and regulations; shooting range performance standards; review.

(1) The Game and Parks Commission shall adopt and promulgate as rules and regulations the shooting range performance standards.

(2) The commission shall review the shooting range performance standards at least once every five years and revise them if necessary for the continuing safe operation of shooting ranges.

Source: Laws 2009, LB503, § 3.
Effective date August 30, 2009.

37-1304 Existing shooting range; effect of zoning provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regula-

tion, ordinance, or resolution related to zoning enacted thereafter by a city, county, village, or other political subdivision of the state, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 4.
Effective date August 30, 2009.

37-1305 Existing shooting range; effect of noise provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regulation, ordinance, or resolution related to noise enacted thereafter by any city, county, village, or other political subdivision of the state, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 5.
Effective date August 30, 2009.

37-1306 Discharge of firearm at shooting range; how treated.

No law, rule, regulation, ordinance, or resolution relating to the discharge of a firearm at a shooting range with respect to any shooting range existing and lawful shall be enforced by any city, county, village, or other political subdivision, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 6.
Effective date August 30, 2009.

37-1307 Existing shooting range; permitted activities.

A shooting range that is existing and lawful shall be permitted to do any of the following if done in compliance with the shooting range performance standards and generally applicable building and safety codes:

(1) Repair, remodel, or reinforce any improvement or facilities or building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(2) Reconstruct, repair, rebuild, or resume the use of a facility or building; or

(3) Do anything authorized under generally recognized operation practices, including, but not limited to:

(a) Expand or enhance its membership or opportunities for public participation; and

(b) Expand or increase facilities or activities within the existing range area.

Source: Laws 2009, LB503, § 7.
Effective date August 30, 2009.

37-1308 Hours of operation.

A city, county, village, or other political subdivision of the state may limit the hours between 10:00 p.m. and 7:00 a.m. that an outdoor shooting range may operate.

Source: Laws 2009, LB503, § 8.
Effective date August 30, 2009.

37-1309 Presumption with respect to noise.

A person who is shooting in compliance with the shooting range performance standards at a shooting range between the hours of 7:00 a.m. and 10:00 p.m. is presumed not to be engaging in unlawful conduct merely because of the noise caused by the shooting.

Source: Laws 2009, LB503, § 9.
Effective date August 30, 2009.

37-1310 Regulation of location and construction; limit on taking of property.

(1) Except as otherwise provided in the Nebraska Shooting Range Protection Act, the act does not prohibit a city, county, village, or other political subdivision of the state from regulating the location and construction of a shooting range.

(2) A person, the state, or any city, county, village, or other political subdivision of the state shall not take title to property which has a shooting range by condemnation, eminent domain, or similar process when the proposed use of the property would be for shooting-related activities or recreational activities or for private commercial development. This subsection does not limit the exercise of eminent domain or easement necessary for infrastructure additions or improvements, such as highways, waterways, or utilities.

Source: Laws 2009, LB503, § 10.
Effective date August 30, 2009.

CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

Article.
1. Uniform Credentialing Act. 38-101 to 38-1,140.
5. Audiology and Speech-Language Pathology Practice Act. 38-507 to 38-524.
12. Emergency Medical Services Practice Act. 38-1215 to 38-1232.
15. Hearing Instrument Specialists Practice Act. 38-1501 to 38-1518.
20. Medicine and Surgery Practice Act. 38-2001 to 38-2062.
28. Pharmacy Practice Act. 38-2801 to 38-2894.
33. Veterinary Medicine and Surgery Practice Act. 38-3301 to 38-3334.

ARTICLE 1
UNIFORM CREDENTIALING ACT

Section
38-101. Act, how cited.
38-121. Practices; credential required.
38-167. Boards; designated; change in name; effect.
38-1,140. Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

38-101 Act, how cited.

Sections 38-101 to 38-1,140 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Emergency Medical Services Practice Act;

(12) The Environmental Health Specialists Practice Act;

(13) The Funeral Directing and Embalming Practice Act;

(14) The Hearing Instrument Specialists Practice Act;

(15) The Licensed Practical Nurse-Certified Practice Act;

(16) The Massage Therapy Practice Act;

(17) The Medical Nutrition Therapy Practice Act;

(18) The Medical Radiography Practice Act;

(19) The Medicine and Surgery Practice Act;

(20) The Mental Health Practice Act;

(21) The Nurse Practice Act;

(22) The Nurse Practitioner Practice Act;

(23) The Nursing Home Administrator Practice Act;

(24) The Occupational Therapy Practice Act;

(25) The Optometry Practice Act;

(26) The Perfusion Practice Act;

(27) The Pharmacy Practice Act;

(28) The Physical Therapy Practice Act;

(29) The Podiatry Practice Act;

(30) The Psychology Practice Act;

(31) The Respiratory Care Practice Act;

(32) The Veterinary Medicine and Surgery Practice Act; and

(33) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (32) of this section, to consecutive articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5.
Effective date August 30, 2009.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol and Drug Counseling Practice Act, see section 38-301.
Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.

Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

(a) Acupuncture;

(b) Advanced practice nursing;

(c) Alcohol and drug counseling;

(d) Asbestos abatement, inspection, project design, and training;

(e) Athletic training;

(f) Audiology;

(g) Speech-language pathology;

(h) Body art;

(i) Chiropractic;

(j) Cosmetology;

(k) Dentistry;

(l) Dental hygiene;

(m) Electrology;

(n) Emergency medical services;

(o) Esthetics;

(p) Funeral directing and embalming;

(q) Hearing instrument dispensing and fitting;

(r) Lead-based paint abatement, inspection, project design, and training;

(s) Licensed practical nurse-certified;

(t) Massage therapy;

(u) Medical nutrition therapy;

(v) Medical radiography;

(w) Medicine and surgery;

(x) Mental health practice;

(y) Nail technology;

(z) Nursing;

(aa) Nursing home administration;

(bb) Occupational therapy;

(cc) Optometry;

(dd) Osteopathy;

(ee) Perfusion;

(ff) Pharmacy;

(gg) Physical therapy;

(hh) Podiatry;

(ii) Psychology;

(jj) Radon detection, measurement, and mitigation;

(kk) Respiratory care;

(ll) Veterinary medicine and surgery;

(mm) Public water system operation; and

(nn) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

(a) Registered environmental health specialist;

(b) Certified marriage and family therapist;

(c) Certified professional counselor; or

(d) Social worker.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

(a) Body art;

(b) Cosmetology;

(c) Emergency medical services;

(d) Esthetics;

(e) Funeral directing and embalming;

(f) Massage therapy; or

(g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws

2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6.
Effective date August 30, 2009.

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

(a) Board of Advanced Practice Registered Nurses;

(b) Board of Alcohol and Drug Counseling;

(c) Board of Athletic Training;

(d) Board of Audiology and Speech-Language Pathology;

(e) Board of Chiropractic;

(f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(g) Board of Dentistry;

(h) Board of Emergency Medical Services;

(i) Board of Registered Environmental Health Specialists;

(j) Board of Funeral Directing and Embalming;

(k) Board of Hearing Instrument Specialists;

(l) Board of Massage Therapy;

(m) Board of Medical Nutrition Therapy;

(n) Board of Medical Radiography;

(o) Board of Medicine and Surgery;

(p) Board of Mental Health Practice;

(q) Board of Nursing;

(r) Board of Nursing Home Administration;

(s) Board of Occupational Therapy Practice;

(t) Board of Optometry;

(u) Board of Pharmacy;

(v) Board of Physical Therapy;

(w) Board of Podiatry;

(x) Board of Psychology;

(y) Board of Respiratory Care Practice;

(z) Board of Veterinary Medicine and Surgery; and

(aa) Water Well Standards and Contractors' Licensing Board.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078;

Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 579, § 24; Laws 1986, LB 355, § 11; Laws 1988, LB 1100, § 8; Laws 1988, LB 557, § 16; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7.
Effective date August 30, 2009.

38-1,140 Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian or perform collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian. Engaging in such conduct is hereby authorized and shall not be considered a part of the credential holder's scope of practice or a violation of the credential holder's scope of practice.

Source: Laws 2008, LB928, § 3; Laws 2009, LB463, § 1.
Effective date August 30, 2009.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section
38-507. Practice of audiology, defined.
38-511. Practice of audiology or speech-language pathology; act, how construed.
38-512. Sale of hearing instruments; audiologist; applicability of act.
38-524. Audiology or speech-language pathology assistant; acts prohibited.

38-507 Practice of audiology, defined.

Practice of audiology means the application of evidence-based practice in clinical decisionmaking for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments, including (1) cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices and (2) evaluation, selection, fitting, and dispensing of hearing instruments, external processors of implantable hearing instruments, and assistive technology devices as part of a comprehensive audiological rehabilitation program. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 67; Laws 2007, LB463, § 192; Laws 2009, LB195, § 8.
Effective date August 30, 2009.

38-511 Practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict:

(1) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person employed as a speech-language pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing instrument specialist in this state from engaging in the fitting, selling, and servicing of hearing instruments or performing such other duties as defined in the Hearing Instrument Specialists Practice Act;

(4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of the Audiology and Speech-Language Pathology Practice Act;

(5) The clinical practice in audiology or speech-language pathology required for students enrolled in an accredited college or university pursuing a major in audiology or speech-language pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech-language pathology and if the student is designated by a title such as student clinician or other title clearly indicating the training status; or

(6) The utilization of a speech aide or other personnel employed by a public school, educational service unit, or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist.

Source: Laws 1978, LB 406, § 14; Laws 1985, LB 129, § 15; Laws 1990, LB 828, § 1; Laws 2001, LB 209, § 11; R.S.1943, (2003), § 71-1,187; Laws 2007, LB247, § 28; Laws 2007, LB463, § 196; Laws 2009, LB195, § 9.
Effective date August 30, 2009.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-512 Sale of hearing instruments; audiologist; applicability of act.

Any audiologist who engages in the sale of hearing instruments shall not be exempt from the Hearing Instrument Specialists Practice Act.

Source: Laws 1978, LB 406, § 23; R.S.1943, (2003), § 71-1,196; Laws 2007, LB463, § 197; Laws 2009, LB195, § 10.
Effective date August 30, 2009.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-524 Audiology or speech-language pathology assistant; acts prohibited.

An audiology or speech-language pathology assistant shall not:

(1) Evaluate or diagnose any type of communication disorder;

(2) Evaluate or diagnose any type of dysphagia;

(3) Interpret evaluation results or treatment progress;

(4) Consult or counsel, independent of the licensed audiologist or speech-language pathologist, with a patient, a patient's family, or staff regarding the nature or degree of communication disorders or dysphagia;

(5) Plan patient treatment programs;

(6) Represent himself or herself as an audiologist or speech-language pathologist or as a provider of speech, language, swallowing, or hearing treatment or assessment services;

(7) Independently initiate, modify, or terminate any treatment program; or

(8) Fit or dispense hearing instruments.

Source: Laws 1985, LB 129, § 29; Laws 1988, LB 1100, § 75; R.S.1943, (2003), § 71-1,195.07; Laws 2007, LB247, § 35; Laws 2007, LB463, § 209; Laws 2009, LB195, § 11.
Effective date August 30, 2009.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section
38-1215. Board; members; terms; meetings; removal.
38-1217. Rules and regulations.
38-1218. Licensure classification.
38-1219. Department; additional rules and regulations.
38-1221. License; requirements; term.
38-1224. Duties and activities authorized; limitations.
38-1232. Individual liability.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active out-of-hospital emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are out-of-hospital emergency care providers, two shall be first responders or emergency medical responders, two shall be emergency medical technicians, one shall be an emergency medical technician-intermediate or an advanced emergency medical technician, and two shall be emergency medical technicians-paramedic or paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in out-of-hospital emergency medical care education, one member who is a registered nurse with at least five years of experience and active in out-of-hospital emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of out-of-hospital emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board there shall be at least one member who is a volunteer emergency medical care provider, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12.
Effective date August 30, 2009.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1)(a) For licenses issued prior to September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) First responder; (ii) emergency medical technician; (iii) emergency medical technician-intermediate; and (iv) emergency medical technician-paramedic; and (b) for licenses issued on or after September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) Emergency medical responder; (ii) emergency medical technician; (iii) advanced emergency medical technician; and (iv) paramedic. The rules and regulations creating the classifications shall include the practices and procedures authorized for each classification, training and testing requirements, renewal and reinstatement requirements, and other criteria and qualifications for each classification determined to be necessary for protection of public health and safety. A person holding a license issued prior to September 1, 2010, shall be authorized to practice in accordance with the laws, rules, and regulations governing the license for the term of the license;

(2) Provide for temporary licensure of an out-of-hospital emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1)(b) of this section but has not completed the testing requirements for licensure under such subdivision. Temporary licensure shall be valid for one year or until a license is issued under such subdivision and shall not be subject to renewal. The rules and regulations shall include qualifications and training necessary for issuance of a temporary license, the practices and procedures authorized for a temporary licensee, and supervision required for a temporary licensee;

(3) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(4) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of out-of-hospital emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(5) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(6) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(7) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(8) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any out-of-hospital emergency care provider or emergency medical service before or after adoption;

(9) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(10) Establish renewal and reinstatement requirements for out-of-hospital emergency care providers and emergency medical services and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(11) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(12) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(13) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians-paramedic, or paramedics performing activities within their scope of practice at a hospital or health clinic under subsection (3) of section 38-1224. Such criteria shall include, but not be limited to: (a) Requirements for the orientation of registered nurses, physician assistants, and physicians involved in the supervision of such personnel; (b) supervisory and training requirements for the physician medical director or other person in charge of the medical staff at such hospital or health clinic; and (c) a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision, health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419; and

(14) Establish criteria and requirements for emergency medical technicians-intermediate to renew licenses issued prior to September 1, 2010, and continue to practice after such classification has otherwise terminated under subdivision (1) of this section. The rules and regulations shall include the qualifications necessary to renew emergency medical technicians-intermediate licenses after September 1, 2010, the practices and procedures authorized for persons holding and renewing such licenses, and the renewal and reinstatement requirements for holders of such licenses.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1;

R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13.
Effective date August 30, 2009.

38-1218 Licensure classification.

(1) The Legislature adopts all parts of the United States Department of Transportation curricula, including appendices, and skills as the training requirements and permitted practices and procedures for the licensure classifications listed in subdivision (1)(a) of section 38-1217 until modified by the board by rule and regulation. The Legislature adopts the United States Department of Transportation National Emergency Medical Services Education Standards and the National Emergency Medical Services Scope of Practice for the licensure classifications listed in subdivision (1)(b) of section 38-1217 until modified by the board by rule and regulation. The board may approve curricula for the licensure classifications listed in subdivision (1) of section 38-1217.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14.
Effective date August 30, 2009.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Provide for curricula which will allow out-of-hospital emergency care providers and users of automated external defibrillators as defined in section 71-51,102 to be trained for the delivery of practices and procedures in units of limited subject matter which will encourage continued development of abilities and use of such abilities through additional authorized practices and procedures;

(3) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act, including provisions for issuing an emergency medical responder license to a licensee renewing his or her first responder license after September 1, 2010, and for issuing a

paramedic license to a licensee renewing his or her emergency medical technician-paramedic license after September 1, 2010; and

(4) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15.
Effective date August 30, 2009.

38-1221 License; requirements; term.

(1) To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with subdivision (1), (2), or (14) of section 38-1217.

(2) All licenses issued under the act other than temporary licenses shall expire the second year after issuance.

(3) An individual holding a certificate under the Emergency Medical Services Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Emergency Medical Services Practice Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with the Uniform Credentialing Act until the certificate would have expired under its terms.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1224 Duties and activities authorized; limitations.

(1) An out-of-hospital emergency care provider other than a first responder or an emergency medical responder as classified under section 38-1217 may not assume the duties incident to the title or practice the skills of an out-of-hospital emergency care provider unless he or she is employed by or serving as a volunteer member of an emergency medical service licensed by the department.

(2) An out-of-hospital emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act.

(3) An emergency medical technician-intermediate, an emergency medical technician-paramedic, an advanced emergency medical technician, or a paramedic may volunteer or be employed at a hospital as defined in section 71-419 or a health clinic as defined in section 71-416 to perform activities within his or her scope of practice within such hospital or health clinic under the supervision of a registered nurse, a physician assistant, or a physician. Such activities shall be performed in a manner established in rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17.
Effective date August 30, 2009.

38-1232 Individual liability.

(1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her licensure, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (8) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18.
Effective date August 30, 2009.

ARTICLE 15

HEARING INSTRUMENT SPECIALISTS PRACTICE ACT

Section
38-1501. Act, how cited.
38-1502. Definitions, where found.
38-1503. Board, defined.
38-1504. Hearing instrument, defined.
38-1505. Practice of fitting hearing instruments, defined.
38-1506. Sell, sale, or dispense, defined.
38-1507. Temporary license, defined.
38-1508. Board membership; qualifications.
38-1509. Sale or fitting of hearing instruments; license required.
38-1510. Applicability of act.
38-1511. Sale; conditions.
38-1512. License; examination; conditions.
38-1513. Temporary license; issuance; supervision; renewal.
38-1514. Qualifying examination; contents; purpose.
38-1515. Applicant for licensure; continuing competency requirements.
38-1516. Applicant for licensure; reciprocity; continuing competency requirements.
38-1517. Licensee; disciplinary action; additional grounds.
38-1518. Fees.

38-1501 Act, how cited.

Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Instrument Specialists Practice Act.

Source: Laws 2007, LB463, § 565; Laws 2009, LB195, § 19.
Effective date August 30, 2009.

38-1502 Definitions, where found.

For purposes of the Hearing Instrument Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1503 to 38-1507 apply.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; R.S.1943, (2003), § 71-4701; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566; Laws 2009, LB195, § 20. Effective date August 30, 2009.

38-1503 Board, defined.

Board means the Board of Hearing Instrument Specialists.

Source: Laws 2007, LB463, § 567; Laws 2009, LB195, § 21. Effective date August 30, 2009.

38-1504 Hearing instrument, defined.

Hearing instrument means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

Source: Laws 2007, LB463, § 568; Laws 2009, LB195, § 22. Effective date August 30, 2009.

38-1505 Practice of fitting hearing instruments, defined.

Practice of fitting hearing instruments means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

Source: Laws 2007, LB463, § 569; Laws 2009, LB195, § 23. Effective date August 30, 2009.

38-1506 Sell, sale, or dispense, defined.

Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with distributors or dispensers and (2) distribution of hearing instruments by nonprofit service organizations at no cost to the recipient for the hearing instrument.

Source: Laws 2007, LB463, § 570; Laws 2009, LB195, § 24. Effective date August 30, 2009.

38-1507 Temporary license, defined.

Temporary license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25. Effective date August 30, 2009.

38-1508 Board membership; qualifications.

The board shall consist of five professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. The professional members shall consist of three licensed hearing instrument specialists, one otolaryngologist, and one audiologist until one licensed hearing instrument specialist vacates his or her office or his or her term expires, whichever occurs first, at which time the professional members of the board shall consist of three licensed hearing instrument specialists, at least one of whom does not hold a license as an audiologist, one otolaryngologist, and one audiologist. At the expiration of the four-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1969, c. 767, § 15, p. 2914; Laws 1981, LB 204, § 130; Laws 1986, LB 701, § 12; Laws 1988, LB 1100, § 160; Laws 1992, LB 1019, § 81; Laws 1993, LB 375, § 6; Laws 1994, LB 1223, § 52; Laws 1999, LB 828, § 173; R.S.1943, (2003), § 71-4715; Laws 2007, LB463, § 572; Laws 2009, LB195, § 26.
Effective date August 30, 2009.

38-1509 Sale or fitting of hearing instruments; license required.

(1) No person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice shall also be licensed as a hearing instrument specialist pursuant to subsection (4) of section 38-1512.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27.
Effective date August 30, 2009.

38-1510 Applicability of act.

(1) The Hearing Instrument Specialists Practice Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if such person or organization employing such person does not sell hearing instruments or the accessories thereto.

(2) The act shall not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit and dispense hearing instruments unless the person to whom the authority is delegated is licensed as a hearing instrument specialist under the act.

Source: Laws 1969, c. 767, § 4, p. 2905; Laws 1986, LB 701, § 4; Laws 1988, LB 1100, § 150; R.S.1943, (2003), § 71-4704; Laws 2007, LB463, § 574; Laws 2009, LB195, § 28.
Effective date August 30, 2009.

38-1511 Sale; conditions.

(1) Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing instrument furnished, and clearly stating the full terms of sale. If a hearing instrument which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.

(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.

Source: Laws 1969, c. 767, § 3, p. 2905; Laws 1986, LB 701, § 3; R.S.1943, (2003), § 71-4703; Laws 2007, LB463, § 575; Laws 2009, LB195, § 29.
Effective date August 30, 2009.

38-1512 License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

(a) Is at least twenty-one years of age; and

(b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a hearing instrument specialist license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure as an audiologist, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1513 Temporary license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary license.

(2) Any person who desires a temporary license shall make application to the department. The temporary license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary license, the temporary license may be renewed or reissued for a twelve-month period. In no case may a temporary license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31.
Effective date August 30, 2009.

38-1514 Qualifying examination; contents; purpose.

The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:

(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing instruments:

(a) Basic physics of sound;

(b) The anatomy and physiology of the ear; and

(c) The function of hearing instruments; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry;

(c) Masking when indicated;

(d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument; and

(e) Taking earmold impressions.

Source: Laws 1969, c. 767, § 9, p. 2908; Laws 1986, LB 701, § 8; R.S.1943, (2003), § 71-4709; Laws 2007, LB463, § 578; Laws 2009, LB195, § 32.
Effective date August 30, 2009.

38-1515 Applicant for licensure; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the education and examination requirements in section 38-1512, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 579; Laws 2009, LB195, § 33.
Effective date August 30, 2009.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34.
Effective date August 30, 2009.

38-1517 Licensee; disciplinary action; additional grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Hearing Instrument Specialists Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

(1) Fitting and selling a hearing instrument to a child under the age of sixteen who has not been examined and cleared for hearing instrument use within a six-month period by an otolaryngologist without a signed waiver by the legal

guardian. This subdivision shall not apply to the replacement with an identical model of any hearing instrument within one year of its purchase;

(2) Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration; or

(3) Violation of any provision of the Hearing Instrument Specialists Practice Act.

Source: Laws 1969, c. 767, § 12, p. 2909; Laws 1986, LB 701, § 10; Laws 1988, LB 1100, § 157; Laws 1991, LB 456, § 37; Laws 1994, LB 1223, § 51; R.S.1943, (2003), § 71-4712; Laws 2007, LB463, § 581; Laws 2009, LB195, § 35.
Effective date August 30, 2009.

38-1518 Fees.

The department shall establish and collect fees for credentialing activities under the Hearing Instrument Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127; R.S.1943, (2003), § 71-4714.01; Laws 2007, LB463, § 582; Laws 2009, LB195, § 36.
Effective date August 30, 2009.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section
38-2001. Act, how cited.
38-2008. Approved program, defined.
38-2009. Repealed. Laws 2009, LB 195, § 111.
38-2014. Physician assistant, defined.
38-2015. Proficiency examination, defined.
38-2017. Supervising physician, defined.
38-2018. Supervision, defined.
38-2037. Additional grounds for disciplinary action.
38-2047. Physician assistants; services performed; supervision requirements.
38-2049. Physician assistants; licenses; temporary licenses; issuance.
38-2050. Physician assistants; supervision; supervising physician; requirements; agreement.
38-2051. Repealed. Laws 2009, LB 195, § 111.
38-2055. Physician assistants; prescribe drugs and devices; restrictions.
38-2062. Anatomic pathology service; unprofessional conduct.

38-2001 Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1.
Operative date January 1, 2010.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is approved by the Accreditation Review Commission on Education for

the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37.
Effective date August 30, 2009.

38-2009 Repealed. Laws 2009, LB 195, § 111.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38.
Effective date August 30, 2009.

38-2015 Proficiency examination, defined.

Proficiency examination means the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

Source: Laws 2007, LB463, § 673; Laws 2009, LB195, § 39.
Effective date August 30, 2009.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40.
Effective date August 30, 2009.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41.
Effective date August 30, 2009.

38-2037 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery or a license to practice as a physician assistant may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the appli-

cant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695; Laws 2009, LB195, § 42.
Effective date August 30, 2009.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician, (b) are appropriate to the level of competence of the physician assistant, (c) form a component of the supervising physician's scope of practice, and (d) are not otherwise prohibited by law.

(2) A physician assistant shall be considered an agent of his or her supervising physician in the performance of practice-related activities delegated by the supervising physician, including, but not limited to, ordering diagnostic, therapeutic, and other medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of competence of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant, are delegated by his or her supervising physician, and are not otherwise prohibited by law.

(5) In order for a physician assistant to practice in a hospital, (a) his or her supervising physician shall be a member of the medical staff of the hospital, (b) the physician assistant shall be approved by the governing board of the hospital, and (c) the physician assistant shall comply with applicable hospital policies, including, but not limited to, reasonable requirements that the physician assistant and the supervising physician maintain professional liability insurance with such coverage and limits as established by the governing board of the hospital.

(6) For physician assistants with less than two years of experience, the department, with the recommendation of the board, shall adopt and promulgate rules and regulations establishing minimum requirements for the personal presence of the supervising physician, stated in hours or percentage of practice time, and may provide different minimum requirements for the personal presence of the supervising physician based on the geographic location of the supervising physician's primary and other practice sites and other factors the board deems relevant.

(7) A physician assistant may render services in a setting geographically remote from the supervising physician, except that a physician assistant with less than two years of experience shall comply with standards of supervision established in rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. The board may consider an application for waiver of the standards and may waive the standards upon a showing of good

cause by the supervising physician. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43.
Effective date August 30, 2009.

Cross References

Liability limitations:
Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2050 Physician assistants; supervision; supervising physician; requirements; agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise a physician assistant; and

(c) Maintain an agreement with the physician assistant as provided in subsection (2) of this section.

(2)(a) An agreement between a supervising physician and a physician assistant shall (i) provide that the supervising physician will exercise supervision over the physician assistant in accordance with the Medicine and Surgery Practice Act and the rules and regulations adopted and promulgated under the act relating to such agreements, (ii) define the scope of practice of the physician assistant, (iii) provide that the supervising physician will retain professional and legal responsibility for medical services rendered by the physician assistant

pursuant to such agreement, and (iv) be signed by the supervising physician and the physician assistant.

(b) The supervising physician shall keep the agreement on file at his or her primary practice site, shall keep a copy of the agreement on file at each practice site where the physician assistant provides medical services, and shall make the agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2051 Repealed. Laws 2009, LB 195, § 111.

38-2055 Physician assistants; prescribe drugs and devices; restrictions.

A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant's scope of practice agreement established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. All prescriptions and prescription container labels shall bear the name of the physician assistant and, if required for purposes of reimbursement, the name of the supervising physician. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46.
Effective date August 30, 2009.

Cross References

Schedules of controlled substances, see section 28-405.

38-2062 Anatomic pathology service; unprofessional conduct.

(1) It shall be unprofessional conduct for any physician who orders but does not supervise or perform a component of an anatomic pathology service to fail to disclose in any bill for such service presented to a patient, entity, or person:

(a) The name and address of the physician or laboratory that provided the anatomic service; and

(b) The actual amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory that performed the service.

(2) For purposes of this section, anatomic pathology service means:

(a) Blood-banking services performed by pathologists;

(b) Cytopathology, which means the microscopic examination of cells from the following: Fluids; aspirates; washings; brushings; or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, which means the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by the pathologist;

(d) Histopathology or surgical pathology, which means the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician; and

(e) Subcellular pathology and molecular pathology.

(3) For purposes of this section, anatomic pathology service does not include the initial collection or packaging of the specimen for transport.

Source: Laws 2009, LB394, § 2.
Operative date January 1, 2010.

ARTICLE 28

PHARMACY PRACTICE ACT

Section
38-2801. Act, how cited.
38-2802. Definitions, where found.
38-2805.01. Accrediting body, defined.
38-2826. Labeling, defined.
38-2826.01. Long-term care facility, defined.
38-2826.02. Medical gas, defined.
38-2826.03. Medical gas device, defined.
38-2827. Repealed. Laws 2009, LB 604, § 12.
38-2850. Pharmacy; practice; persons excepted.
38-2867. Pharmacy; scope of practice; prohibited acts; violation; penalty.
38-2869. Prospective drug utilization review; counseling; requirements.
38-2871. Prescription information; transfer; requirements.
38-2873. Delegated dispensing permit; requirements.
38-2881. Delegated dispensing permit; formularies.
38-2886. Delegated dispensing permit; workers; training; requirements; documentation.
38-2888. Delegated dispensing permit; licensed health care professionals; training required.
38-2889. Delegated dispensing permit; advisory committees; authorized.
38-2893. Pharmacy Technician Registry; created; contents.
38-2894. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,103 shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB195, section 47, with LB604, section 1, to reflect all amendments.

Note: Changes made by LB604 became effective May 27, 2009. Changes made by LB195 became effective August 30, 2009.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB195, section 48, with LB604, section 2, to reflect all amendments.

Note: Changes made by LB604 became effective May 27, 2009. Changes made by LB195 became effective August 30, 2009.

38-2805.01 Accrediting body, defined.

Accrediting body means an entity recognized by the Centers for Medicare and Medicaid Services to provide accrediting services for the Medicare Part B Home Medical Equipment Services Benefit.

Source: Laws 2009, LB604, § 3.
Effective date May 27, 2009.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for medical gases and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6.
Effective date May 27, 2009.

38-2826.01 Long-term care facility, defined.

Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 2009, LB195, § 49.
Effective date August 30, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2826.02 Medical gas, defined.

Medical gas means oxygen in liquid or gaseous form intended for human consumption.

Source: Laws 2009, LB604, § 4.
Effective date May 27, 2009.

38-2826.03 Medical gas device, defined.

Medical gas device means a medical device associated with the administration of medical gas.

Source: Laws 2009, LB604, § 5.
Effective date May 27, 2009.

38-2827 Repealed. Laws 2009, LB 604, § 12.

38-2850 Pharmacy; practice; persons excepted.

As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(8) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are

not sold or purchased under a direct, specific, written medical order of a licensed veterinarian; and

(12) A pharmacy or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S.1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30; R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946; Laws 2009, LB604, § 7.
Effective date May 27, 2009.

Cross References

Nebraska Liquor Control Act, see section 53-101.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty.

(1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963; Laws 2009, LB604, § 8.
Effective date May 27, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2869 Prospective drug utilization review; counseling; requirements.

(1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

(i) The patient or caregiver refuses patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant;

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note ''Contact Before Counseling'' on the face of the prescription if such is communicated orally by the prescribing practitioner; or

(v) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (12) of section 38-2850.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965; Laws 2009, LB604, § 9.
Effective date May 27, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2871 Prescription information; transfer; requirements.

Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Source: Laws 2001, LB 398, § 36; R.S.1943, (2003), § 71-1,146.02; Laws 2007, LB463, § 967; Laws 2009, LB195, § 50.
Effective date August 30, 2009.

38-2873 Delegated dispensing permit; requirements.

(1) Any person who has entered into a delegated dispensing agreement pursuant to section 38-2872 may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the department. A hospital applying for a delegated dispensing permit shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department, with the recommendation of the board, determines that:

(a) The application and delegated dispensing agreement comply with the Pharmacy Practice Act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, or dialysis drug or device distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public convenience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 38-2874.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Source: Laws 2001, LB 398, § 48; R.S.1943, (2003), § 71-1,147.63; Laws 2007, LB463, § 969; Laws 2009, LB604, § 10.
Effective date May 27, 2009.

Cross References

Health Care Facility Licensure Act, see section 71-401.

38-2881 Delegated dispensing permit; formularies.

(1) With the recommendation of the board, the director shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) With the recommendation of the board, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections

which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

(i) Controlled substances;

(ii) Drugs with significant dietary interactions;

(iii) Drugs with significant drug-drug interactions; and

(iv) Drugs or devices with complex counseling profiles.

(3)(a) With the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; R.S.1943, (2003), § 71-1,147.48; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977; Laws 2009, LB154, § 4.
Effective date August 30, 2009.

38-2886 Delegated dispensing permit; workers; training; requirements; documentation.

(1) A delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved in advance by the board.

(2) A delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the board.

(3) The public health clinic, the dialysis drug or device distributor, and the delegating pharmacist shall be responsible to assure that approved training has occurred and is documented.

Source: Laws 1994, LB 900, § 25; Laws 1998, LB 1073, § 78; Laws 2001, LB 398, § 60; R.S.1943, (2003), § 71-1,147.55; Laws 2007, LB463, § 982; Laws 2009, LB154, § 5.
Effective date August 30, 2009.

38-2888 Delegated dispensing permit; licensed health care professionals; training required.

A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 38-2884 and who are

dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the board.

Source: Laws 1994, LB 900, § 27; Laws 1996, LB 1108, § 20; Laws 1998, LB 1073, § 80; Laws 2000, LB 1115, § 20; Laws 2001, LB 398, § 62; R.S.1943, (2003), § 71-1,147.57; Laws 2007, LB463, § 984; Laws 2009, LB154, § 6.
Effective date August 30, 2009.

38-2889 Delegated dispensing permit; advisory committees; authorized.

The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; R.S.1943, (2003), § 71-1,147.59; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985; Laws 2009, LB154, § 7.
Effective date August 30, 2009.

38-2893 Pharmacy Technician Registry; created; contents.

(1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 38-2894.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 38-2890: (a) The individual's full name; (b) information necessary to identify the individual; and (c) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34; R.S.Supp.,2007, § 71-1,147.68; Laws 2009, LB288, § 2.
Operative date August 30, 2009.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (17) and (19) through (24) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section

25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3.
Operative date August 30, 2009.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section
38-3301. Act, how cited.
38-3302. Definitions, where found.
38-3307.01. Health care therapy, defined.
38-3309.01. Licensed animal therapist, defined.
38-3314. Unlicensed assistant, defined.
38-3321. Veterinarian; veterinary technician; animal therapist; license; required; exceptions.
38-3331. Civil penalty; recovery; lien.
38-3332. Animal therapist; license; application; qualifications.
38-3333. Animal therapist; health care therapy; conditions; letter of referral; liability.
38-3334. Animal therapist; additional disciplinary grounds.

38-3301 Act, how cited.

Sections 38-3301 to 38-3334 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2.
Effective date August 30, 2009.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3.
Effective date August 30, 2009.

38-3307.01 Health care therapy, defined.

Health care therapy means health care activities that require the exercise of judgment for which licensure is required under the Uniform Credentialing Act.

Source: Laws 2009, LB463, § 4.
Effective date August 30, 2009.

38-3309.01 Licensed animal therapist, defined.

Licensed animal therapist means an individual who (1) has and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery, (2) has met the standards for additional training regarding the performance of that health care

profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board, and (3) is licensed as an animal therapist by the department.

Source: Laws 2009, LB463, § 5.
Effective date August 30, 2009.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6.
Effective date August 30, 2009.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes; or

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7.
Effective date August 30, 2009.

38-3331 Civil penalty; recovery; lien.

(1) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who engages in the practice of veterinary medicine and surgery without being licensed or otherwise authorized to do so under the Veterinary Medicine and Surgery Practice Act shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for the second or subsequent offense. If a violation continues after notification, this constitutes a separate offense.

(2) The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil

penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB463, § 8.
Effective date August 30, 2009.

38-3332 Animal therapist; license; application; qualifications.

Each applicant for a license as an animal therapist in this state shall present to the department:

(1) Proof that the applicant holds and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery;

(2) Proof that the applicant has met the standards for additional training regarding the performance of that health care profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board; and

(3) Such other information and proof as the department, with the recommendation of the board, may require by rule and regulation.

Source: Laws 2009, LB463, § 9.
Effective date August 30, 2009.

38-3333 Animal therapist; health care therapy; conditions; letter of referral; liability.

(1) A licensed animal therapist may perform health care therapy on an animal only if:

(a) The health care therapy is consistent with the licensed animal therapist's training required for the license referred to under subdivision (1) of section 38-3332;

(b) The owner of the animal presents to the licensed animal therapist a prior letter of referral for health care therapy that includes a veterinary medical diagnosis and evaluation completed by a licensed veterinarian who has a veterinarian-client-patient relationship with the owner and the animal and has made the diagnosis and evaluation within ninety days immediately preceding the date of the initiation of the health care therapy; and

(c) The licensed animal therapist provides health care therapy reports at least monthly to the referring veterinarian, except that a report is not required for any month in which health care therapy was not provided.

(2) A licensed veterinarian who prepares a letter of referral for health care therapy by a licensed animal therapist shall not be liable for damages caused to the animal as a result of the health care therapy performed by the licensed animal therapist.

Source: Laws 2009, LB463, § 10.
Effective date August 30, 2009.

38-3334 Animal therapist; additional disciplinary grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice as a licensed animal therapist may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the appli-

cant or licensee is subjected to disciplinary measures with regard to his or her license referred to under subdivision (1) of section 38-3332.

Source: Laws 2009, LB463, § 11.
Effective date August 30, 2009.

CHAPTER 42
HUSBAND AND WIFE

Article.
3. Divorce, Alimony, and Child Support.
   (d) Domestic Relations Actions. 42-358.02 to 42-369.
9. Domestic Violence.
   (a) Protection from Domestic Abuse Act. 42-917.

ARTICLE 3
DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section
42-358.02. Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.
42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
42-369. Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(d) DOMESTIC RELATIONS ACTIONS

42-358.02 Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.

(1) All delinquent child support payments, spousal support payments, and medical support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments, spousal support payments, and medical support payments shall become delinquent the day after they are due and owing, except that no obligor whose support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the support payment is due, (b) the total amount of support payments to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for support payments are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The Title IV-D Division of the Department of Health and Human Services shall compute interest and identify

delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent support order payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Source: Laws 1975, LB 212, § 4; Laws 1981, LB 167, § 31; Laws 1983, LB 371, § 2; Laws 1984, LB 845, § 26; Laws 1985, Second Spec. Sess., LB 7, § 11; Laws 1987, LB 569, § 1; Laws 1991, LB 457, § 2; Laws 1997, LB 18, § 1; Laws 2000, LB 972, § 11; Laws 2005, LB 396, § 2; Laws 2007, LB296, § 58; Laws 2009, LB288, § 4.
Operative date October 1, 2010.

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and before July 1, 2010, the case may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process and on or after such date the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (a) a parenting plan developed by the parties, if approved by the court, or (b) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act. The social security number of each

parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue:

(a) The court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child, as defined in the Parenting Act, and it appears by the evidence that one or more of the grounds for termination of parental rights stated in section 43-292 exist; and

(b) The court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process before July 1, 2010, and on and after such date shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5. Operative date September 30, 2009.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withhold-

ing for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health insurance available to him or her through an employer, organization, or other health insurance entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed three percent of his or her gross income. In applying the three-percent standard, the cost is the cost of adding the children to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payments shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is or such expense would reduce the responsible party's net income below the basic subsistence limitation provided in Nebraska Court Rule section 4-218. If such rule does not describe a basic subsistence limitation, the responsible party's net income shall not be reduced below nine hundred three dollars net monthly income for one person or below the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6.
Operative date September 30, 2009.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

ARTICLE 9
DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

Section
42-917. Delivery of services; cooperation; coordination of programs.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-917 Delivery of services; cooperation; coordination of programs.

The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the State Department of Education, the Department of Health and Human Services, and other appropriate agencies, community service agencies, and private sources.

Source: Laws 1978, LB 623, § 17; Laws 1980, LB 684, § 17; Laws 1995, LB 275, § 2; Laws 1996, LB 1044, § 104; Laws 2004, LB 1083, § 90; Laws 2007, LB296, § 61; Laws 2009, LB154, § 8.
Effective date August 30, 2009.

CHAPTER 43
INFANTS AND JUVENILES

Article.
1. Adoption Procedures.
   (a) General Provisions. 43-103.
   (b) Wards and Children with Special Needs. 43-117.
2. Juvenile Code.
   (b) General Provisions. 43-245.
   (c) Law Enforcement Procedures. 43-250.
   (e) Prosecution. 43-276.
   (g) Disposition. 43-283.01, 43-292.
5. Assistance for Certain Children. 43-512 to 43-512.17.
10. Interstate Compact for Juveniles. 43-1001 to 43-1011.
11. Interstate Compact for the Placement of Children. 43-1101 to 43-1103.
12. Uniform Child Custody Jurisdiction and Enforcement Act. 43-1230.
13. Foster Care.
   (a) Foster Care Review Act. 43-1302, 43-1314.02.
20. Missing Children Identification Act. 43-2007.
30. Access to Information and Records. 43-3001.
37. Court Appointed Special Advocate Act. 43-3713.
40. Children's Behavioral Health. 43-4001.

ARTICLE 1
ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section
43-103. Petition; hearing; notice.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117. Adoptive parents; assistance; medical assessment of child.

(a) GENERAL PROVISIONS

43-103 Petition; hearing; notice.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon the filing of a petition for adoption the court shall fix a time for hearing the same. The hearing shall be held not less than four weeks nor more than eight weeks after the filing of such petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance. The court may require notice of the hearing to be given to the child, if over fourteen years of age, to the natural parent or parents of the child, and to such other interested persons as the judge may, in the exercise of discretion, deem advisable, in the manner provided for service of a summons in a civil action. If the judge directs notice by publication, such notice shall be published three successive weeks in a legal newspaper of general circulation in such county.

Source: Laws 1943, c. 104, § 3, p. 349; R.S.1943, § 43-103; Laws 1983, LB 447, § 50; Laws 1985, LB 255, § 19; Laws 2009, LB35, § 27. Operative date August 30, 2009.

Cross References

Juveniles in need of assistance under Nebraska Juvenile Code, notice requirements, see section 43-297.
Nebraska Indian Child Welfare Act, see section 43-1501.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117 Adoptive parents; assistance; medical assessment of child.

(1) The Department of Health and Human Services may make payments as needed, after the legal completion of an adoption, on behalf of a child who immediately preceding the adoption was (a) a ward of the department with special needs or (b) the subject of a state-subsidized guardianship. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's twentieth birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the department, the department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the department.

Source: Laws 1971, LB 425, § 1; Laws 1996, LB 1044, § 114; Laws 1997, LB 788, § 1; Laws 2009, LB91, § 1.
Effective date August 30, 2009.

ARTICLE 2
JUVENILE CODE

(b) GENERAL PROVISIONS

Section
43-245. Terms, defined.

(c) LAW ENFORCEMENT PROCEDURES

43-250. Temporary custody; disposition; custody requirements.

(e) PROSECUTION

43-276. County attorney; criminal charge, juvenile court petition, pretrial diversion, or mediation; determination; considerations.

(g) DISPOSITION

43-283.01. Preserve and reunify the family; reasonable efforts; requirements.
43-292. Termination of parental rights; grounds.

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Age of majority means nineteen years of age;

(2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(3) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(4) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(5) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(6) Juvenile means any person under the age of eighteen;

(7) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(8) Juvenile detention facility has the same meaning as in section 83-4,125;

(9) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

(10) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(11) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(12) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

(13) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;

(14) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(15) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(16) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(17) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

(18) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28.
Effective date May 28, 2009.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

(c) LAW ENFORCEMENT PROCEDURES

43-250 Temporary custody; disposition; custody requirements.

A peace officer who takes a juvenile into temporary custody under section 29-401 or 43-248 or pursuant to a legal warrant of arrest shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(1) The peace officer shall release such juvenile;

(2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;

(3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary, to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(a) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropoli-

tan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(b) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(d) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(f) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. A status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(g) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance;

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any

necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative;

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement; or

(6) Beginning July 1, 2010, a juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to the probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile has been taken into custody.

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29.
Effective date May 28, 2009.

(e) PROSECUTION

43-276 County attorney; criminal charge, juvenile court petition, pretrial diversion, or mediation; determination; considerations.

In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court

petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (11) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (13) whether the juvenile is a criminal street gang member; and (14) such other matters as the county attorney deems relevant to his or her decision.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30.
Effective date May 28, 2009.

(g) DISPOSITION

43-283.01 Preserve and reunify the family; reasonable efforts; requirements.

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Source: Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1.
Effective date August 30, 2009.

43-292 Termination of parental rights; grounds.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

Source: Laws 1981, LB 346, § 48; Laws 1992, LB 1184, § 15; Laws 1996, LB 1044, § 143; Laws 1998, LB 1041, § 27; Laws 2009, LB517, § 2.
Effective date August 30, 2009.

ARTICLE 5
ASSISTANCE FOR CERTAIN CHILDREN

Section
43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.
43-512.03. County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.
43-512.07. Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.
43-512.12. Title IV-D child support order; review by Department of Health and Human Services; when.
43-512.15. Title IV-D child support order; modification; when; procedures.
43-512.16. Title IV-D child support order; review of health care coverage provisions.
43-512.17. Title IV-D child support order; financial information; disclosure; contents.

43-512 Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be

required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the

family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child, cash medical support as defined in section 42-369, health care coverage as defined in section 44-3,144, and medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp.,1941, § 43-512; R.S.1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 130, § 1, p. 549; Laws 1951, c. 79, § 5, p. 240; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 942, § 3; Laws 1982, LB 522, § 13; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB296, § 115; Laws 2007, LB351, § 2; Laws 2009, LB288, § 7.
Operative date September 30, 2009.

43-512.03 County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.

(1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a complaint against a nonsupporting party in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate the child and medical support liability of either party and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.18, 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

Source: Laws 1976, LB 926, § 5; Laws 1977, LB 425, § 3; Laws 1981, LB 345, § 3; Laws 1982, LB 522, § 14; Laws 1983, LB 371, § 15; Laws 1985, Second Spec. Sess., LB 7, § 68; Laws 1986, LB 600, § 12; Laws 1987, LB 37, § 1; Laws 1991, LB 457, § 7; Laws 1991, LB 715, § 8; Laws 1994, LB 1224, § 51; Laws 1995, LB 3, § 1; Laws 1996, LB 1044, § 158; Laws 1997, LB 229, § 36; Laws 1997, LB 307, § 60; Laws 1997, LB 752, § 98; Laws 2004, LB 1207, § 37; Laws 2009, LB288, § 8.
Operative date September 30, 2009.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
License Suspension Act, see section 43-3301.
Uniform Interstate Family Support Act, see section 42-701.

43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.

(1) Any action, payment, aid, or assistance listed in this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support, when ordered by the court, and to child support, whether or not ordered by the court, which a person may have in his or her own behalf or on behalf of any other person for whom such person receives such payments, aid, or assistance:

(a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;

(b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or

(c) Receipt of aid from child welfare funds.

The assignment under this section is the right to support payments that become due while the person is receiving payments, aid, or assistance listed in this subsection. The department shall be entitled to retain such child, spousal, or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid for the months during which such payments, aid, or assistance was made shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received in excess of the amount of support ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full.

Source: Laws 1976, LB 926, § 9; Laws 1981, LB 345, § 5; Laws 1985, Second Spec. Sess., LB 7, § 71; Laws 1986, LB 600, § 13; Laws 1987, LB 599, § 13; Laws 1991, LB 457, § 11; Laws 1993, LB

435, § 3; Laws 1995, LB 524, § 1; Laws 1996, LB 1044, § 161; Laws 1997, LB 307, § 63; Laws 2000, LB 972, § 18; Laws 2009, LB288, § 9.
Operative date October 1, 2009.

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when.

Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(1) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(2) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

An order shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered. An order shall not be reviewed by the department more than once every three years unless the requesting party demonstrates a substantial change in circumstances, and an order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1) of this section.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10.
Operative date September 30, 2009.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706, (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support, or (iii) the incarceration is a result of a conviction for a crime in which the child who is the subject of the child support order was victimized; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.

(3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11.
Operative date August 30, 2009.

43-512.16 Title IV-D child support order; review of health care coverage provisions.

The county attorney or authorized attorney shall review the health care coverage provisions contained in any child support order which is subject to review under section 43-512.12 and shall include in any application for modification a request that the court order health care coverage or cash medical support as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 17; Laws 2009, LB288, § 12.
Operative date September 30, 2009.

43-512.17 Title IV-D child support order; financial information; disclosure; contents.

Any financial information provided to the Department of Health and Human Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12

to 43-512.18 may be disclosed to the other parties to the case or to the court. Financial information shall include the following:

(1) An affidavit of financial status provided by the party requesting review;

(2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;

(3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and

(4) Information relating to health care coverage as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 18; Laws 1993, LB 523, § 11; Laws 1996, LB 1044, § 167; Laws 1996, LB 1296, § 23; Laws 1997, LB 307, § 68; Laws 2009, LB288, § 13.
Operative date September 30, 2009.

ARTICLE 10

INTERSTATE COMPACT FOR JUVENILES

Section
43-1001. Repealed. Laws 2009, LB 237, § 5.
43-1002. Repealed. Laws 2009, LB 237, § 5.
43-1003. Repealed. Laws 2009, LB 237, § 5.
43-1004. Repealed. Laws 2009, LB 237, § 5.
43-1005. Expense of returning juvenile to state; how paid.
43-1006. Repealed. Laws 2009, LB 237, § 5.
43-1007. Repealed. Laws 2009, LB 237, § 5.
43-1008. Repealed. Laws 2009, LB 237, § 5.
43-1009. Repealed. Laws 2009, LB 237, § 5.
43-1010. Repealed. Laws 2009, LB 237, § 5.
43-1011. Interstate Compact for Juveniles.

43-1001 Repealed. Laws 2009, LB 237, § 5.

43-1002 Repealed. Laws 2009, LB 237, § 5.

43-1003 Repealed. Laws 2009, LB 237, § 5.

43-1004 Repealed. Laws 2009, LB 237, § 5.

43-1005 Expense of returning juvenile to state; how paid.

The expense of returning juveniles to this state pursuant to the Interstate Compact for Juveniles shall be paid as follows:

(1) In the case of a runaway, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he or she is able to do so shall order that he or she pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile for his or her actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

(2) In the case of an escapee or absconder, if the juvenile is in the legal custody of the Department of Health and Human Services it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to his or her custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. In this subdivision appropriate court means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state, then the juvenile court of the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition, the person entitled to his or her legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he or she is financially unable to pay all the expenses he or she may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in subdivision (1) of this section. The court shall inquire summarily into the financial ability of the petitioner, and, if it finds he or she is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

Source: Laws 1963, c. 248, § 5, p. 756; Laws 1996, LB 1044, § 192; Laws 2009, LB237, § 2.
Effective date August 30, 2009.

Cross References

Interstate Compact for Juveniles, see section 43-1011.

43-1006 Repealed. Laws 2009, LB 237, § 5.

43-1007 Repealed. Laws 2009, LB 237, § 5.

43-1008 Repealed. Laws 2009, LB 237, § 5.

43-1009 Repealed. Laws 2009, LB 237, § 5.

43-1010 Repealed. Laws 2009, LB 237, § 5.

43-1011 Interstate Compact for Juveniles.

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control

Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials; and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefor are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. ''Bylaws'' means: those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. ''Compact Administrator'' means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles

subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. ''Compacting State'' means: any state which has enacted the enabling legislation for this compact.

D. ''Commissioner'' means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. ''Court'' means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. ''Deputy Compact Administrator'' means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. ''Interstate Commission'' means: the Interstate Commission for Juveniles created by Article III of this compact.

H. ''Juvenile'' means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Nonoffender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. ''Noncompacting state'' means: any state which has not enacted the enabling legislation for this compact.

J. ''Probation or Parole'' means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. ''Rule'' means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. ''State'' means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the ''Interstate Commission for Juveniles.'' The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred

upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and

official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime, or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

g. Providing ''startup'' rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice-chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provid-

ed, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the ''Model State Administrative Procedures Act,'' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this compact shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII

FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be deter-

mined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefor determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Source: Laws 2009, LB237, § 1.
Effective date August 30, 2009.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.
Interstate Compact for the Placement of Children, see section 43-1103.

ARTICLE 11

INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

Section
43-1101. Repealed. Laws 2009, LB 237, § 5.
43-1102. Repealed. Laws 2009, LB 237, § 5.
43-1103. Interstate Compact for the Placement of Children.

43-1101 Repealed. Laws 2009, LB 237, § 5.

43-1102 Repealed. Laws 2009, LB 237, § 5.

43-1103 Interstate Compact for the Placement of Children.

ARTICLE I.

PURPOSE

The purpose of this Interstate Compact for the Placement of Children is to:

A. Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.

B. Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

C. Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

D. Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

E. Provide for uniform data collection and information sharing between member states under this compact.

F. Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact.

G. Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.

H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

ARTICLE II.

DEFINITIONS

As used in this compact,

A. ''Approved placement'' means the public child-placing agency in the receiving state has determined that the placement is both safe and suitable for the child.

B. ''Assessment'' means an evaluation of a prospective placement by a public child-placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including, but not limited to, the child's safety and stability, health and well-being, and mental, emotional, and physical

development. An assessment is only applicable to a placement by a public child-placing agency.

C. ''Child'' means an individual who has not attained the age of eighteen (18).

D. ''Certification'' means to attest, declare or swear to before a judge or notary public.

E. ''Default'' means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or rules of the Interstate Commission.

F. ''Home study'' means an evaluation of a home environment conducted in accordance with the applicable requirements of the state in which the home is located, and documents the preparation and the suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state in which the home is located.

G. ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 11 section 1602(c).

H. ''Interstate Commission for the Placement of Children'' means the commission that is created under Article VIII of this compact and which is generally referred to as the Interstate Commission.

I. ''Jurisdiction'' means the power and authority of a court to hear and decide matters.

J. ''Legal Risk Placement'' (''Legal Risk Adoption'') means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

K. ''Member state'' means a state that has enacted this compact.

L. ''Noncustodial parent'' means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

M. ''Nonmember state'' means a state which has not enacted this compact.

N. ''Notice of residential placement'' means information regarding a placement into a residential facility provided to the receiving state including, but not limited to, the name, date, and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility.

O. ''Placement'' means the act by a public or private child-placing agency intended to arrange for the care or custody of a child in another state.

P. ''Private child-placing agency'' means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney that facilitates, causes, or is involved in the placement of a child from

one state to another and that is not an instrumentality of the state or acting under color of state law.

Q. ''Provisional placement'' means a determination made by the public child-placing agency in the receiving state that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

R. ''Public child-placing agency'' means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes, or is involved in the placement of a child from one state to another.

S. ''Receiving state'' means the state to which a child is sent, brought, or caused to be sent or brought.

T. ''Relative'' means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

U. ''Residential Facility'' means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities.

V. ''Rule'' means a written directive, mandate, standard, or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability and that implements, interprets, or prescribes a policy or provision of the compact. ''Rule'' has the force and effect of an administrative rule in a member state, and includes the amendment, repeal, or suspension of an existing rule.

W. ''Sending state'' means the state from which the placement of a child is initiated.

X. ''Service member's permanent duty station'' means the military installation where an active duty Armed Services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

Y. ''Service member's state of legal residence'' means the state in which the active duty Armed Services member is considered a resident for tax and voting purposes.

Z. ''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States.

AA. ''State court'' means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency, or status offenses of individuals who have not attained the age of eighteen (18).

BB. ''Supervision'' means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this compact.

ARTICLE III.

APPLICABILITY

A. Except as otherwise provided in Article III, Section B, this compact shall apply to:

1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state, provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement.

2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

a. the child is being placed in a residential facility in another member state and is not covered under another compact; or

b. the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

3. The interstate placement of any child by a public child-placing agency or private child-placing agency as defined in this compact as a preliminary step to a possible adoption.

B. The provisions of this compact shall not apply to:

1. The interstate placement of a child in a custody proceeding in which a public child-placing agency is not a party, provided the placement is not intended to effectuate an adoption.

2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.

3. The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.

4. The placement of a child, not subject to Article III, Section A, into a residential facility by his or her parent.

5. The placement of a child with a noncustodial parent provided that:

a. The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child; and

b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

c. The court in the sending state dismisses its jurisdiction in interstate placements in which the public child-placing agency is a party to the proceeding.

6. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.

7. Cases in which a U.S. citizen child living overseas with his family, at least one of whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state.

8. The sending of a child by a public child-placing agency or a private child-placing agency for a visit as defined by the rules of the Interstate Commission.

C. For purposes of determining the applicability of this compact to the placement of a child with a family in the Armed Services, the public child-placing agency or private child-placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

D. Nothing in this compact shall be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts, including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate Commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV.
JURISDICTION

A. Except as provided in Article IV, Section H, and Article V, Section B, paragraph two and three, concerning private and independent adoptions, and in interstate placements in which the public child-placing agency is not a party to a custody proceeding, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

B. When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In cases that are before courts and subject to this compact, the taking of testimony for hearings before any judicial officer may occur in person or by telephone, audio-video conference, or such other means as approved by the rules of the Interstate Commission; and Judicial officers may communicate with other judicial officers and persons involved in the interstate process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by the Interstate Commission.

D. In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child-placing agency in the receiving state; or

2. The child is adopted; or

3. The child reaches the age of majority under the laws of the sending state; or

4. The child achieves legal independence pursuant to the laws of the sending state; or

5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; or

6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or

7. The public child-placing agency of the sending state requests termination and has obtained the concurrence of the public child-placing agency in the receiving state.

E. When a sending state court terminates its jurisdiction, the receiving state child-placing agency shall be notified.

F. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state which would be a violation of its laws.

G. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

H. The substantive laws of the state in which an adoption will be finalized shall solely govern all issues relating to the adoption of the child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except:

1. when the child is a ward of another court that established jurisdiction over the child prior to the placement; or

2. when the child is in the legal custody of a public agency in the sending state; or

3. when a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

I. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an ''approved placement'' by the public child-placing agency in the receiving state.

ARTICLE V

PLACEMENT EVALUATION

A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the public child-placing agency shall provide a written request for assessment to the receiving state.

B. For placements by a private child-placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child-placing agency. The required content to accompany a request for approval shall include all of the following:

1. A request for approval identifying the child, the birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval; and

2. The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state, or, where permitted, the laws of the state where the adoption will be finalized; and

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the

applicable laws of the sending state, or where permitted the laws of the state where finalization of the adoption will occur; and

4. A home study; and

5. An acknowledgment of legal risk signed by the prospective adoptive parents.

C. The sending state and the receiving state may request additional information or documents prior to finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted, received, and reviewed by the public child-placing agency in both the sending state and the receiving state.

D. Approval from the public child-placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the Interstate Commission.

E. The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the Interstate Commission.

F. Upon receipt of a request from the public child-placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child-placing agency of the sending state may request a determination for a provisional placement.

G. The public child-placing agency in the receiving state may request from the public child-placing agency or the private child-placing agency in the sending state, and shall be entitled to receive supporting or additional information necessary to complete the assessment or approve the placement.

H. The public child-placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the rules of the Interstate Commission.

I. For a placement by a private child-placing agency, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.

J. The Interstate Commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI.

PLACEMENT AUTHORITY

A. Except as otherwise provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

B. If the public child-placing agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. Such determination is not subject to judicial review in the sending state.

C. If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state's determination.

1. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures act.

2. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be deemed approved, provided, however, that all administrative or judicial remedies have been exhausted or the time for such remedies has passed.

ARTICLE VII.

PLACING AGENCY RESPONSIBILITY

A. For the interstate placement of a child made by a public child-placing agency or state court:

1. The public child-placing agency in the sending state shall have financial responsibility for:

a. the ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state; and

b. as determined by the public child-placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state.

2. The receiving state shall only have financial responsibility for:

a. any assessment conducted by the receiving state; and

b. supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child-placing agencies of the receiving and sending state.

3. Nothing in this provision shall prohibit public child-placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

B. For the placement of a child by a private child-placing agency preliminary to a possible adoption, the private child-placing agency shall be:

1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption.

2. Financially responsible for the child absent a contractual agreement to the contrary.

C. The public child-placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the Interstate Commission.

D. The public child-placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of the placement.

E. Nothing in this compact shall be construed as to limit the authority of the public child-placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the provision of supervision or services by a licensed agency during the period of placement.

F. Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the

compact and Interstate Commission activities, through the creation of an advisory council or use of an existing body or board.

G. Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the Interstate Commission.

H. The public child-placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., for placements subject to the provisions of this compact, prior to placement.

I. With the consent of the Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

ARTICLE VIII.

INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

The member states hereby establish, by way of this compact, a commission known as the ''Interstate Commission for the Placement of Children.'' The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a joint commission of the member states and shall have the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states.

B. Consist of one commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner shall have the legal authority to vote on policy related matters governed by this compact binding the state.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state.

4. A representative may delegate voting authority to another person from their state for a specified meeting.

C. In addition to the commissioners of each member state, the Interstate Commission shall include persons who are members of interested organizations as defined in the bylaws or rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to vote on any matter before the Interstate Commission.

D. Establish an executive committee which shall have the authority to administer the day-to-day operations and administration of the Interstate Commission. It shall not have the power to engage in rulemaking.

ARTICLE IX.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact.

B. To provide for dispute resolution among member states.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, or actions.

D. To enforce compliance with this compact or the bylaws or rules of the Interstate Commission pursuant to Article XII of this compact.

E. To collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

F. To establish and maintain offices as may be necessary for the transacting of its business.

G. To purchase and maintain insurance and bonds.

H. To hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies, and rates of compensation.

I. To establish and appoint committees and officers, including, but not limited to, an executive committee as required by Article X of this compact.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose thereof.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate and provide education, training and public awareness regarding the interstate movement of children for officials involved in such activity.

Q. To maintain books and records in accordance with the bylaws of the Interstate Commission.

R. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. Bylaws

1. Within twelve months after the first Interstate Commission meeting, the Interstate Commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact.

2. The Interstate Commission's bylaws and rules shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

B. Meetings

1. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states shall call additional meetings.

2. Public notice shall be given by the Interstate Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

a. relate solely to the Interstate Commission's internal personnel practices and procedures; or

b. disclose matters specifically exempted from disclosure by federal law; or

c. disclose financial or commercial information which is privileged, proprietary, or confidential in nature; or

d. involve accusing a person of a crime, or formally censuring a person; or

e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one or more persons; or

f. disclose investigative records compiled for law enforcement purposes; or

g. specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission or by court order.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or other electronic communication.

C. Officers and Staff

1. The Interstate Commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The staff director shall serve as secretary to the Interstate Commission, but

shall not have a vote. The staff director may hire and supervise such other staff as may be authorized by the Interstate Commission.

2. The Interstate Commission shall elect, from among its members, a chairperson and a vice-chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

D. Qualified Immunity, Defense and Indemnification

1. The Interstate Commission's staff director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

a. The liability of the Interstate Commission's staff director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

b. The Interstate Commission shall defend the staff director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

c. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XI.

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the ''Model State Administrative Procedures Act,'' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedure acts as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule; and

2. Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available; and

3. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

E. Not later than sixty days after a rule is promulgated, an interested person may file a petition in the U.S. District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

F. If a majority of the legislatures of the member states rejects a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause that such rule shall have no further force and effect in any member state.

G. The existing rules governing the operation of the Interstate Compact on the Placement of Children superseded by this compact shall be null and void no less than twelve but no more than twenty-four months after the first meeting of the Interstate Commission created hereunder, as determined by the members during the first meeting.

H. Within the first twelve months of operation, the Interstate Commission shall promulgate rules addressing the following:

1. Transition rules

2. Forms and procedures

3. Timelines

4. Data collection and reporting

5. Rulemaking

6. Visitation

7. Progress reports/supervision

8. Sharing of information/confidentiality

9. Financing of the Interstate Commission

10. Mediation, arbitration, and dispute resolution

11. Education, training, and technical assistance

12. Enforcement

13. Coordination with other interstate compacts

I. Upon determination by a majority of the members of the Interstate Commission that an emergency exists:

1. The Interstate Commission may promulgate an emergency rule only if it is required to:

a. Protect the children covered by this compact from an imminent threat to their health, safety and well-being; or

b. Prevent loss of federal or state funds; or

c. Meet a deadline for the promulgation of an administrative rule required by federal law.

2. An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

3. An emergency rule shall be promulgated as provided for in the rules of the Interstate Commission.

ARTICLE XII.

OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

A. Oversight

1. The Interstate Commission shall oversee the administration and operation of the compact.

2. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and the rules of the Interstate Commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.

3. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.

4. The Interstate Commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the Interstate Commission shall render any judgment, order or other determination, however so captioned or classified, void as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Commission.

B. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting

states. The costs of such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

C. Enforcement

1. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, its bylaws, or rules, the Interstate Commission may:

a. Provide remedial training and specific technical assistance; or

b. Provide written notice to the defaulting state and other member states, of the nature of the default and the means of curing the default. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; or

c. By majority vote of the members, initiate against a defaulting member state legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal office, to enforce compliance with the provisions of the compact, its bylaws or rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees; or

d. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

ARTICLE XIII.

FINANCING OF THE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved by its members each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XIV.

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV.

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same. The effective date of withdrawal shall be the effective date of the repeal of the statute.

3. The withdrawing state shall immediately notify the president of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall then notify the other member states of the withdrawing state's intent to withdraw.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the Interstate Commission.

B. Dissolution of compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVI.

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

ARTICLE XVII.

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

B. Binding Effect of the compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XVIII.

INDIAN TRIBES

Notwithstanding any other provision in this compact, the Interstate Commission may promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the purposes of the compact as specified in Article I of this compact. The Interstate Commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

Source: Laws 2009, LB237, § 3.
Effective date August 30, 2009.

Cross References

Interstate Compact for Juveniles, see section 43-1011.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
43-1230. International application of act.

43-1230 International application of act.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) and subsection (c) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

(f) A court of this state shall have initial and continuing jurisdiction to make any determinations and to grant any relief set forth in subsection (d) of this section upon the motion or complaint seeking such, filed by any parent or custodian of a child who is the subject of a foreign court's custody determination and a habitual resident of Nebraska. The absence or dismissal, either voluntary or involuntary, of an action for the recognition and enforcement of a foreign court's custody determination under subsection (b) of this section shall in no way deprive the court of jurisdiction set forth in this subsection. Subsection (c) of section 43-1238 shall apply to any proceeding under this subsection.

This subsection shall be deemed remedial and shall apply to all cases pending on or before March 6, 2009, and to all cases initiated subsequent thereto.

Source: Laws 2003, LB 148, § 5; Laws 2007, LB341, § 13; Laws 2009, LB201, § 1.
Effective date March 6, 2009.

ARTICLE 13

FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section
43-1302. State Foster Care Review Board; established; members; disclosure required; terms; expenses.
43-1314.02. Caregiver information form; development; provided to caregiver.

(a) FOSTER CARE REVIEW ACT

43-1302 State Foster Care Review Board; established; members; disclosure required; terms; expenses.

(1) The State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Credentialing Act; one practitioner of child clinical psychology, licensed under the Uniform Credentialing Act; one social worker certified under the Uniform Credentialing Act, with expertise in the area of child welfare; one attorney who is or has been a

guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance. Prior to appointment, each potential member shall disclose any and all funding he or she or his or her employer receives from the Department of Health and Human Services.

The terms of members appointed pursuant to this subsection shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subsection take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1.
Effective date August 30, 2009.

Cross References

Uniform Credentialing Act, see section 38-101.

43-1314.02 Caregiver information form; development; provided to caregiver.

(1) The court shall provide a caregiver information form or directions on downloading such form from the Supreme Court Internet web site to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

(a) The child's name, age, and date of birth;

(b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;

(c) How long the child has been in the caregiver's care;

(d) A current picture of the child;

(e) The current status of the child's medical, dental, and general physical condition;

(f) The current status of the child's emotional condition;

(g) The current status of the child's education;

(h) Whether or not the child is a special education student and the date of the last individualized educational plan;

(i) A brief description of the child's social skills and peer relationships;

(j) A brief description of the child's special interests and activities;

(k) A brief description of the child's reactions before, during, and after visits;

(l) Whether or not the child is receiving all necessary services;

(m) The date and place of each visit by the caseworker with the child;

(n) A description of the method by which the guardian ad litem has acquired information about the child; and

(o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

Source: Laws 2007, LB457, § 1; Laws 2009, LB35, § 28.
Operative date August 30, 2009.

ARTICLE 20

MISSING CHILDREN IDENTIFICATION ACT

Section
43-2007. Schools; exempt school; duties.

43-2007 Schools; exempt school; duties.

(1) Upon notification by the patrol of a missing person, any school in which the missing person is currently or was previously enrolled shall flag the school records of such person in such school's possession. The school shall report immediately any request concerning a flagged record or any knowledge of the whereabouts of the missing person.

(2) Upon enrollment of a student for the first time in a public school district or private school system, the school of enrollment shall notify in writing the person enrolling the student that within thirty days he or she must provide either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(3) Upon enrollment of a student who is receiving his or her education in an exempt school subject to sections 79-1601 to 79-1607, the parent or guardian of such student shall provide to the Commissioner of Education either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(4) Upon failure of the person, parent, or guardian to comply with subsection (2) or (3) of this section, the school or Commissioner of Education shall notify such person, parent, or guardian in writing that unless he or she complies within ten days the matter shall be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the school or commissioner shall immediately report such matter. Any affidavit received pursuant to subsection (2) or (3) of this section that appears inaccurate

or suspicious in form or content shall be reported immediately to the local law enforcement agency by the school or commissioner.

(5) Any school requested to forward a copy of a transferred student's record shall not forward a copy of such record to the requesting school if the record has been flagged pursuant to subsection (1) of this section. If such record has been flagged, the school to whom such request is made shall notify the local law enforcement agency of the request and that such student is a reported missing person.

Source: Laws 1987, LB 599, § 7; Laws 1991, LB 511, § 3; Laws 1992, LB 245, § 9; Laws 1996, LB 900, § 1047; Laws 2009, LB549, § 2. Effective date August 30, 2009.

ARTICLE 30

ACCESS TO INFORMATION AND RECORDS

Section
43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

43-3001 Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and

other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information. Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67; Laws 2009, LB35, § 29.
Operative date August 30, 2009.

ARTICLE 37

COURT APPOINTED SPECIAL ADVOCATE ACT

Section
43-3713. Cooperation; notice required.

43-3713 Cooperation; notice required.

(1) All government agencies, service providers, professionals, school districts, school personnel, parents, and families shall cooperate with all reasonable requests of the court appointed special advocate volunteer. The volunteer shall cooperate with all government agencies, service providers, professionals, school districts, school personnel, parents, and families.

(2) The volunteer shall be notified in a timely manner of all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed. The court in its discretion may proceed notwithstanding failure to notify the volunteer or failure of the volunteer to appear.

Source: Laws 2000, LB 1167, § 36; Laws 2009, LB35, § 30.
Operative date August 30, 2009.

ARTICLE 40

CHILDREN'S BEHAVIORAL HEALTH

Section
43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1.
Effective date May 27, 2009.

CHAPTER 44
INSURANCE

Article.
3. General Provisions Relating to Insurance. 44-3,144.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-710.01 to 44-7,103.
19. Title Insurance.
(b) Title Insurers Act. 44-1988.
40. Insurance Producers Licensing Act. 44-4065.
42. Comprehensive Health Insurance Pool Act. 44-4201 to 44-4227.
51. Investments. 44-5103.
52. Small Employer Health Insurance. 44-5223 to 44-5263.
53. Health Insurance Access. 44-5302 to 44-5307.
59. Insurers Examination. 44-5904, 44-5905.
64. Uninsured and Underinsured Motorist Insurance Coverage. 44-6413.
66. Insurance Fraud. 44-6604.

ARTICLE 3
GENERAL PROVISIONS RELATING TO INSURANCE

Section
44-3,144. Health care coverage of children; terms, defined.

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, including fee for service, health maintenance organization, preferred provider organization, and other types of coverage available to either party, under which medical services could be provided to dependent children, 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; Laws 2009, LB288, § 14.
Operative date September 30, 2009.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section
44-710.01. Sickness and accident insurance; standard policy provisions; requirements; enumeration.
44-761. Group sickness and accident insurance; required provisions.
44-7,103. Continuing coverage for children to age thirty; requirements.

44-710.01 Sickness and accident insurance; standard policy provisions; requirements; enumeration.

No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is

furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

Source: Laws 1957, c. 188, § 2, p. 643; Laws 1969, c. 374, § 1, p. 1333; Laws 1989, LB 92, § 131; Laws 1998, LB 1063, § 1; Laws 2009, LB551, § 1.
Operative date January 1, 2010.

44-761 Group sickness and accident insurance; required provisions.

Each group policy of sickness and accident insurance shall contain in substance the following provisions:

(1) A provision that the policy, the application of the policyholder if such application or copy thereof is attached to such policy, and the individual applications, if any, submitted in connection with such policy by the employees or members, shall constitute the entire contract between the parties, that all statements, in the absence of fraud, made by any applicant or applicants shall be deemed representations and not warranties, and that no such statement shall avoid the insurance or reduce benefits thereunder unless contained in a written application of which a copy is attached to the policy;

(2) A provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit;

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy; and

(4) A provision that the insurance coverage of the employee or member may include, originally or by subsequent amendment, upon the application of the employee or member, any two or more eligible members of his or her family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years, and any other person dependent upon the policyholder. Any policy which provides that coverage of an unmarried dependent child shall terminate upon the attainment of the limiting age for unmarried dependent children specified in the policy shall also provide that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of the insurance coverage of the employee or member under such policy and while such child is and continues to be (a) incapable of self-sustaining employment by reason of mental or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of such child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following such child's attainment of the limiting age. The insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child. The provisions of this subdivision shall be contained in all new policies of group sickness and accident insurance delivered or issued for delivery to any person in this state. No group policy of sickness and accident insurance shall contain any provisions which are in conflict with sections 44-3,144 to 44-3,150.

Source: Laws 1947, c. 164, § 16(2), p. 469; Laws 1976, LB 649, § 1; Laws 1989, LB 92, § 153; Laws 1994, LB 1224, § 79; Laws 2009, LB551, § 2.
Operative date January 1, 2010.

44-7,103 Continuing coverage for children to age thirty; requirements.

(1) For purposes of this section, health benefit plan means any expense-incurred individual or group sickness and accident insurance policy, health maintenance organization contract, subscriber contract, or self-funded employee benefit plan to the extent not preempted by federal law, except for any policy or contract that provides coverage only for excepted benefits as defined in the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. 1191b, and regulations adopted pursuant to the act, as such act and regulations existed on January 1, 2009, or any policy or contract that provides coverage for a specified disease or other limited-benefit coverage.

(2) Notwithstanding section 44-3,131, any health benefit plan that provides coverage for children shall provide for continuing coverage for such children as follows:

(a) If coverage under the health benefit plan would otherwise terminate because a covered child ceases to be a dependent, ceases to be a full-time student, or attains an age which exceeds the specified age at which coverage ceases pursuant to the plan, the health benefit plan shall provide the option to the insured to continue coverage for such child through the end of the month in which the child (i) marries, (ii) ceases to be a resident of the state, unless the

child is under nineteen years of age or is enrolled on a full-time basis in any college, university, or trade school, (iii) receives coverage under another health benefit plan or a self-funded employee benefit plan that is not included in the definition of a health benefit plan under subsection (1) of this section but provides similar coverage, or (iv) attains thirty years of age; and

(b) The health benefit plan may require:

(i) A written election from the insured; and

(ii) An additional premium for the child. Such premium shall not vary based upon the health status of the child and shall not exceed the amount the health benefit plan would receive for an identical individual for a single adult insured. No employer shall be required to contribute to any additional premium under this subdivision.

Source: Laws 2009, LB551, § 3.
Operative date January 1, 2010.

ARTICLE 19

TITLE INSURANCE

(b) TITLE INSURERS ACT

Section
44-1988. Reserves.

(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 in an amount equal to seventeen cents per one thousand dollars of net retained liability for each insurance policy.

(ii) The amount set aside in the reserve required under subdivision (3)(b)(i) 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: Thirty percent of the

aggregate sum in the year next succeeding the year of addition; fifteen percent of the aggregate sum in the next succeeding year; ten percent of the aggregate sum in each of the next succeeding two years; five percent of the aggregate sum in each of the next succeeding two years; three percent of the aggregate sum in each of the next succeeding two years; two percent of the aggregate sum in each of the next succeeding seven years; and one percent of the aggregate sum in each of the next succeeding five years. For each year in which a release of statutory or unearned premium reserve is authorized under this subdivision, such reserve shall be released over the course of the year in twelve equal monthly amounts, beginning on July 1.

(c)(i) 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)(c)(iii) of this section.

(ii) Following the transfer of domicile to this state of the title insurer described in subdivision (3)(c)(i) of this section, 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)(i) of this section.

(iii) The amounts set aside in the reserve required under subdivision (3)(c)(i) 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: An initial release of 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; fifteen percent of the aggregate sum in the next succeeding year; ten percent of the aggregate sum in each of the next succeeding two years; five percent of the aggregate sum in each of the next succeeding two years; three percent of the aggregate sum in each of the next succeeding two years; two percent of the aggregate sum in each of the next succeeding seven years; and one percent of the aggregate sum in each of the next succeeding five years. For each year in which a release of statutory or unearned premium reserve is authorized under this subdivision, such reserve shall be released over the course of the year in twelve equal monthly amounts, beginning on July 1.

(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.

(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; Laws 2009, LB192, § 2.
Effective date August 30, 2009.

ARTICLE 40

INSURANCE PRODUCERS LICENSING ACT

Section
44-4065. Reports.

44-4065 Reports.

(1) An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction, by a professional self-regulatory organization such as the Financial Industry Regulatory Authority or a similar organization, or by another governmental agency within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) An insurance producer shall report to the director any obligation regarding insurance premiums or fiduciary funds owed to a company, including a premium finance company, or a managing general agent within thirty days of the date of discharge or attempt to discharge such obligation in a personal or organizational bankruptcy proceeding.

(3) Within thirty days of the date of arraignment or date of waiver of arraignment, if waived, an insurance producer shall report to the director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

(4) For purposes of this section, administrative action shall include, but not be limited to, any arbitration or mediation award, disciplinary action, civil action, or sanction taken against or involving an insurance producer.

Source: Laws 2001, LB 51, § 19; Laws 2009, LB192, § 3.
Effective date August 30, 2009.

ARTICLE 42

COMPREHENSIVE HEALTH INSURANCE POOL ACT

Section
44-4201. Act, how cited.
44-4220.01. Review of operation; report.
44-4220.02. Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.
44-4221. Purchase pool coverage; eligibility.
44-4222. Purchase of pool coverage; ineligibility.
44-4222.01. Insurer, agent, broker, or third-party administrator; prohibited acts; violation; unfair trade practice.
44-4226. Major medical expense coverage required; considerations.
44-4227. Premium and standard risk rates; how determined.

44-4201 Act, how cited.

Sections 44-4201 to 44-4235 shall be known and may be cited as the Comprehensive Health Insurance Pool Act.

Source: Laws 1985, LB 391, § 1; Laws 1997, LB 862, § 20; Laws 2001, LB 360, § 20; Laws 2004, LB 1047, § 9; Laws 2009, LB358, § 1.
Effective date August 30, 2009.

44-4220.01 Review of operation; report.

Following the close of each calendar year, the board shall conduct a review of the operation of the pool and report to the director the board's recommendations for cost savings in the operation of the pool.

Source: Laws 2009, LB358, § 2.
Effective date August 30, 2009.

44-4220.02 Review of health care provider reimbursement rates; report; health care provider; reimbursement; other payments.

(1)(a) In addition to the requirements of section 44-4220.01, following the close of each calendar year, the board shall conduct a review of health care provider reimbursement rates for benefits payable under pool coverage for covered services. The board shall report to the director the results of the review within thirty days after the completion of the review.

(b) The review required by this section shall include a determination of whether (i) health care provider reimbursement rates for benefits payable under pool coverage for covered services are in excess of reasonable amounts and (ii) cost savings in the operation of the pool could be achieved by establishing the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(c) In the determination pursuant to subdivision (1)(b)(i) of this section, the board shall consider:

(i) The success of any efforts by the administering insurer to negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services on a voluntary basis;

(ii) The effect of health care provider reimbursement rates for benefits payable under pool coverage for covered services on the number and geographic distribution of health care providers providing covered services to covered individuals;

(iii) The administrative cost of implementing a level of health care provider reimbursement rates for benefits payable under pool coverage for covered services; and

(iv) A filing by the administering insurer which shows the difference, if any, between the aggregate amounts set for health care provider reimbursement rates for benefits payable under pool coverage for covered services by existing contracts between the administering insurer and health care providers and the amounts generally charged to reimburse health care providers prevailing in the commercial market. No such filing shall require the administering insurer to disclose proprietary information regarding health care provider reimbursement rates for specific covered services under pool coverage.

(d) If the board determines that cost savings in the operation of the pool could be achieved, the board shall set forth specific findings supporting the determination and may establish the level of health care provider reimbursement rates for benefits payable under pool coverage for covered services as a multiplier of an objective standard.

(2) A health care provider who provides covered services to a covered individual under pool coverage and requests payment is deemed to have agreed to reimbursement according to the health care provider reimbursement rates for benefits payable under pool coverage for covered services established

pursuant to this section. Any reimbursement paid to a health care provider for providing covered services to a covered person under pool coverage is limited to the lesser of billed charges or the health care provider reimbursement rates for benefits payable under pool coverage for covered services established pursuant to this section. A health care provider shall not collect or attempt to collect from a covered individual any money owed to the health care provider by the pool. A health care provider shall not have any recourse against a covered individual for any covered services under pool coverage in excess of the copayment, coinsurance, or deductible amounts specified in the pool coverage. Nothing in this section shall prohibit a health care provider from billing a covered individual under pool coverage for services which are not covered services under pool coverage.

Source: Laws 2009, LB358, § 3.
Effective date August 30, 2009.

44-4221 Purchase pool coverage; eligibility.

(1) To be eligible to purchase pool coverage, an individual shall:

(a) Be a resident of the state for a period of at least six months and shall be an individual:

(i) Who is not eligible for coverage under a group health plan comparable to pool coverage, medicare by reason of age, 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 comparable to pool coverage;

(ii) 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; and

(iii)(A) Who has received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer for health insurance coverage comparable to pool coverage;

(B) Who currently has, or has been offered within six months prior to application to the pool, health insurance coverage comparable to pool coverage by an insurer which includes a restrictive rider which limits health insurance coverage for a preexisting medical condition; or

(C) Who has been refused health insurance coverage comparable to pool coverage, or has been offered health insurance 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) 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

(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 pool 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; Laws 2009, LB358, § 4.
Effective date August 30, 2009.

Cross References

Medical Assistance Act, see section 68-901.

44-4222 Purchase of 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;

(e) He or she is no longer a resident of Nebraska; or

(f) The premium for his or her pool coverage is paid for by a person other than the following:

(i) The individual;

(ii) An individual related to the individual by blood, marriage, or adoption; or

(iii) An entity operating under the federal Ryan White HIV/AIDS Treatment Modernization Act of 2006, Public Law 109-415, as such act existed on August 30, 2009.

(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; Laws 2009, LB358, § 5.
Effective date August 30, 2009.

Cross References

Medical Assistance Act, see section 68-901.

44-4222.01 Insurer, agent, broker, or third-party administrator; prohibited acts; violation; unfair trade practice.

(1) No insurer, agent, broker, or third-party administrator shall refer an individual employee to the pool or arrange for an individual employee to apply for pool coverage for the purpose of separating that individual employee from group health insurance coverage in connection with the individual employee's employment.

(2) Any 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 2009, LB358, § 6.
Effective date August 30, 2009.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-4226 Major medical expense coverage required; considerations.

(1) The pool shall offer major medical expense coverage to every eligible individual. The pool coverage, its schedule of benefits, and exclusions and other limitations shall be established through rules and regulations adopted and promulgated by the director taking into consideration the advice and recommendations of the members.

(2) In establishing the pool coverage, the director shall take into consideration the levels of individual health insurance coverage provided in the state and such medical economic factors as may be deemed appropriate and shall determine benefit levels, deductibles, coinsurance and stop-loss factors, exclusions, and limitations determined to be generally reflective of and commensurate with individual health insurance coverage provided by the ten insurers writing the largest amount of individual health insurance coverage in the state.

(3) Pool coverage established under this section shall provide both an appropriate high and low deductible to be selected by the pool applicant. The deductibles and coinsurance and stop-loss factors may be adjusted annually according to the medical component of the Consumer Price Index.

Source: Laws 1985, LB 391, § 26; Laws 1992, LB 1006, § 39; Laws 2000, LB 1253, § 28; Laws 2009, LB358, § 7.
Effective date August 30, 2009.

44-4227 Premium and standard risk rates; how determined.

(1)(a) For calendar years prior to January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices. Special rates shall be provided for children under eighteen years of age.

(b) For calendar years prior to January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the five insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such five insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event five insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage. The annual premium rate established for pool coverage shall be one hundred thirty-five percent of rates established as applicable for individual standard risks, except that the annual premium rate established for pool coverage for children under eighteen years of age shall be sixty-seven and five-tenths percent of rates established as applicable for individual standard risks.

(2)(a) For calendar years beginning on and after January 1, 2010, rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices.

(b)(i) For calendar years beginning on and after January 1, 2010, the pool, with the assistance of an independent actuary, shall determine the standard risk rate by calculating the average individual rate charged by the ten insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage, except that such ten insurers shall not include any insurer which has not been writing individual health insurance coverage in this state in at least the three preceding calendar years. The selection of the independent actuary shall be subject to the approval of the director. In the event ten insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage.

(ii)(A) The annual premium rate established for pool coverage for calendar year 2010 (I) shall be one hundred forty percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(B) The annual premium rate established for pool coverage for calendar year 2011 (I) shall be one hundred forty-five percent of rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(C) The annual premium rate established for pool coverage for calendar year 2012 and each calendar year thereafter (I) shall be one hundred fifty percent of

rates established as applicable for individual standard risks or (II) shall be the rates established as applicable for individual standard risks for the previous calendar year adjusted by a trend factor reflecting medical economic factors as the board deems appropriate, whichever is greater.

(3) The board shall not adjust or increase pool rates more than one time during any calendar year. All rates and rate schedules shall be submitted to the director for approval. The director shall hold a public hearing pursuant to the Administrative Procedure Act prior to approving an adjustment to or increase in pool rates.

Source: Laws 1985, LB 391, § 27; Laws 1989, LB 279, § 9; Laws 1990, LB 1136, § 107; Laws 1991, LB 419, § 4; Laws 1992, LB 1006, § 40; Laws 1998, LB 1063, § 3; Laws 2000, LB 1253, § 29; Laws 2009, LB358, § 8.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 51
INVESTMENTS

Section
44-5103. Terms, defined.

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, Federal Home Loan 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 the regulator charged with establishing such standards and assessing the solvency of such institutions and that is regulated by federal or state banking laws or the Federal Home Loan Bank Act 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; Laws 2009, LB192, § 4.
Effective date August 30, 2009.

ARTICLE 52

SMALL EMPLOYER HEALTH INSURANCE

Section
44-5223. Act, how cited.
44-5225. Definitions, where found.
44-5230. Basic health benefit plan, defined.
44-5231.01. Bona fide association, defined.
44-5236. Repealed. Laws 2009, LB 154, § 27.
44-5255. Standard health benefit plan, defined.
44-5260. Small employer, defined; group health plan; health benefit plans; requirements; filing; exceptions; preexisting condition exclusion; network plans.
44-5262. Repealed. Laws 2009, LB 154, § 27.
44-5263. Board; report required; contents.

44-5223 Act, how cited.

Sections 44-5223 to 44-5267 shall be known and may be cited as the Small Employer Health Insurance Availability Act.

Source: Laws 1994, LB 1222, § 1; Laws 1997, LB 862, § 30; Laws 2000, LB 1253, § 33; Laws 2002, LB 1139, § 29; Laws 2009, LB192, § 5.
Effective date August 30, 2009.

44-5225 Definitions, where found.

For purposes of the Small Employer Health Insurance Availability Act, the definitions found in sections 44-5226 to 44-5255.01 shall be used.

Source: Laws 1994, LB 1222, § 3; Laws 1997, LB 862, § 31; Laws 2000, LB 1253, § 34; Laws 2002, LB 1139, § 30; Laws 2009, LB192, § 6.
Effective date August 30, 2009.

44-5230 Basic health benefit plan, defined.

Basic health benefit plan shall mean a lower cost health benefit plan regulated by the board.

Source: Laws 1994, LB 1222, § 8; Laws 2009, LB154, § 9.
Effective date August 30, 2009.

44-5231.01 Bona fide association, defined.

Bona fide association means, with respect to health insurance coverage offered in this state, an association that meets the following conditions:

(1) Has been actively in existence for at least five years;

(2) Has been formed and maintained in good faith for purposes other than obtaining insurance;

(3) Does not condition membership in the association on a health-status-related factor of an individual, including an employee or a dependent of any employee;

(4) Makes health insurance coverage offered through the association available to any member regardless of a health-status-related factor of the member or individual eligible for coverage through a member; and

(5) Does not make available health insurance coverage offered through the association other than in connection with a member of the association.

Source: Laws 2009, LB192, § 7.
Effective date August 30, 2009.

44-5236 Repealed. Laws 2009, LB 154, § 27.

44-5255 Standard health benefit plan, defined.

Standard health benefit plan shall mean a health benefit plan regulated by the board.

Source: Laws 1994, LB 1222, § 33; Laws 2009, LB154, § 10.
Effective date August 30, 2009.

44-5260 Small employer, defined; group health plan; health benefit plans; requirements; filing; exceptions; preexisting condition exclusion; network plans.

(1) For purposes of this section, small employer shall mean, in connection with a group health plan with respect to a calendar year and a plan year, any person, firm, corporation, partnership, association, or political subdivision that is actively engaged in business that employed an average of at least two but not more than fifty employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code shall be treated as one employer. Subsequent to the issuance of a health benefit plan to a small employer and for the purpose of determining continued eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of the Small Employer Health Insurance Availability Act that apply to a small employer shall continue to apply at least until the health benefit plan anniversary following the date the small employer no longer meets the requirements of this definition. In the case of an employer which was not in existence

throughout the preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year. Any reference in the act to an employer shall include a reference to any predecessor of such employer.

(2)(a) Every small employer carrier shall, as a condition of transacting business in this state with small employers, actively offer to small employers all health benefit plans it actively markets to small employers in this state, including at least two health benefit plans. One health benefit plan offered by each small employer carrier shall be a basic health benefit plan, and one plan shall be a standard health benefit plan. A small employer carrier shall be considered to be actively marketing a health benefit plan if it offers that plan to any small employer not currently receiving a health benefit plan by such small employer carrier. This subdivision shall not require a small employer carrier to offer to small employers a health benefit plan marketed only through a bona fide association.

(b)(i) Subject to subdivision (2)(a) of this section, a small employer carrier shall issue any health benefit plan to any eligible small employer that applies for the plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the Small Employer Health Insurance Availability Act. However, no small employer carrier shall be required to issue a health benefit plan to a self-employed individual who is covered by, or is eligible for coverage under, a health benefit plan offered by an employer.

(ii) In the case of a small employer carrier that establishes more than one class of business, the small employer carrier shall maintain and issue to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if:

(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic health benefit plan or a standard health benefit plan;

(B) The criteria are not related to the health status or claim experience of employees or dependents of the small employer;

(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(D) The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

The provisions of subdivision (2)(b)(ii) of this section shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(3)(a) A small employer carrier shall file with the director, in a format and manner prescribed by the director, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed pursuant to this subsection may be used by a small employer carrier beginning thirty days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a

small employer carrier of a basic health benefit plan or standard health benefit plan on the grounds that the plan does not meet the requirements of the act.

(4) Health benefit plans covering small employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months, or eighteen months in the case of a late enrollee, following the enrollment date of the individual's coverage due to a preexisting condition or the first date of the waiting period for enrollment if that date is earlier than the enrollment date. A health benefit plan shall not define a preexisting condition more restrictively than as defined in section 44-5246.02. A health benefit plan shall not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition;

(b) A health benefit plan shall not impose any preexisting condition exclusion:

(i) To an individual who, as of the last day of the thirty-day period beginning with the date of birth, is covered under creditable coverage, and the individual had creditable coverage that was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage; or

(ii) To a child less than eighteen years of age who is adopted or placed for adoption and who, as of the last day of the thirty-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage, and the child had creditable coverage that was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage;

(c)(i) A small employer carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in a health benefit plan for the aggregate period of time an individual was previously covered by creditable coverage that provided benefits with respect to such services if the creditable coverage was continuous to a date not more than sixty-three days prior to the enrollment date of new coverage. The period of continuous coverage shall not include any waiting period or affiliation period for the effective date of the new coverage applied by the employer or the carrier. This subdivision shall not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(ii) A small employer carrier that does not use preexisting condition limitations in any of its health benefit plans may impose an affiliation period:

(A) That does not exceed sixty days for new entrants and does not exceed ninety days for late enrollees;

(B) During which the carrier charges no premiums and the coverage issued is not effective; and

(C) That is applied uniformly, without regard to any health-status-related factor.

(iii) This subdivision does not preclude application of any waiting period applicable to all enrollees under the health benefit plan if any carrier waiting period is no longer than sixty days.

(iv)(A) In lieu of the requirements of subdivision (4)(c)(i) of this section, a small employer carrier may elect to reduce the period of any preexisting condition exclusion based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations.

(B) A small employer electing to reduce the period of any preexisting condition exclusion using the alternative method described in subdivision (4)(c)(iv)(A) of this section shall make the election on a uniform basis for all enrollees and count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(C) A small employer carrier electing to reduce the period of any preexisting condition exclusion using the alternative method described in subdivision (4)(c)(iv)(A) of this section shall prominently state that the election has been made in any disclosure statements concerning coverage under the health benefit plan to each enrollee at the time of enrollment under the plan and to each small employer at the time of the offer or sale of the coverage and include in the disclosure statements the effect of the election;

(d)(i) A small employer carrier shall permit an eligible employee or dependent, who requests enrollment following the open enrollment opportunity, to enroll, and the eligible employee or dependent shall not be considered a late enrollee if the eligible employee or dependent:

(A) Was covered under another health benefit plan at the time the eligible employee or dependent was eligible to enroll;

(B) Stated in writing at the time of the open enrollment period that coverage under another health benefit plan was the reason for declining enrollment but only if the health benefit plan or health carrier required such a written statement and provided a notice of the consequences of such written statement;

(C) Has lost coverage under another health benefit plan as a result of the termination of employment, the termination of the other health benefit plan's coverage, death of a spouse, legal separation, or divorce or was under a continuation-of-coverage policy or contract available under federal law and the coverage was exhausted; and

(D) Requests enrollment within thirty days after the termination of coverage under the other health benefit plan.

(ii)(A) If a small employer carrier issues a health benefit plan and makes coverage available to a dependent of an eligible employee and such dependent becomes a dependent of the eligible employee through marriage, birth, adoption, or placement for adoption, then such health benefit plan shall provide for a dependent special enrollment period during which the dependent may be enrolled under the health benefit plan and, in the case of the birth or adoption of a child, the spouse of an eligible employee may be enrolled if otherwise eligible for coverage.

(B) A dependent special enrollment period shall be a period of not less than thirty days and shall begin on the later of (I) the date such dependent coverage is available or (II) the date of the marriage, birth, adoption, or placement for adoption.

(C) If an eligible employee seeks to enroll a dependent during the first thirty days of such a dependent special enrollment period, the coverage of the dependent shall become effective:

(I) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(II) In the case of the birth of a dependent, as of the date of birth; and

(III) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption;

(e)(i) Except as provided in subdivision (4)(e)(iv) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(ii) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(iii)(A) Except as provided in subdivision (4)(e)(iii)(B) of this section, in applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have creditable coverage in determining whether the applicable percentage of participation is met.

(B) With respect to a small employer with ten or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by such small employer in applying minimum participation requirements.

(iv) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage; and

(f)(i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents who apply for enrollment during the period in which the employee first becomes eligible to enroll under the terms of the plan. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group except in the case of late enrollees as provided in subdivision (4)(a) of this section.

(ii) Except as permitted under subdivisions (a) and (d) of this subsection, a small employer carrier shall not modify a health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(iii) A small employer carrier shall not place any restriction in regard to any health-status-related factor on an eligible employee or dependent with respect to enrollment or plan participation.

(5) A small employer carrier shall not be required to offer coverage or accept applications pursuant to subsection (2) of this section in the case of the following:

(a) To an employee if previous basic health benefit plans or standard health benefit plans have, in the aggregate, paid one million dollars in benefits on behalf of the employee. Benefits paid on behalf of the employee in the immediately preceding two calendar years by prior small employer carriers under basic and standard plans shall be included when calculating the lifetime maximum benefits payable under the succeeding basic or standard plans. In any situation in which a determination of the total amount of benefits paid by

prior small employer carriers is required by the succeeding carrier, prior carriers shall furnish a statement of the total benefits paid under basic and standard plans at the succeeding carrier's request; or

(b) Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(6)(a) A small employer carrier offering coverage through a network plan shall not be required to offer coverage or accept applications pursuant to subsection (2) of this section to or from a small employer as defined in subsection (1) of this section:

(i) If the small employer does not have eligible employees who live, work, or reside in the service area for such network plan; or

(ii) If the small employer does have eligible employees who live, work, or reside in the service area for such network plan, the carrier has demonstrated, if required, to the director that it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees and that it is applying subdivision (6)(a)(ii) of this section uniformly to all employers without regard to the claims experience of those employers and their employees and their dependents or any health-status-related factor relating to such employees and dependents.

(b) A small employer carrier, upon denying health insurance coverage in any service area in accordance with subdivision (6)(a)(ii) of this section, shall not offer coverage in the small employer market within such service area for a period of one hundred eighty days after the date such coverage is denied.

(7) A small employer carrier shall not be required to provide coverage to small employers pursuant to subsection (2) of this section for any period of time for which the director determines that requiring the acceptance of small employers in accordance with the provisions of such subsection would place the small employer carrier in a financially impaired condition.

Source: Laws 1994, LB 1222, § 38; Laws 1995, LB 837, § 4; Laws 1997, LB 862, § 46; Laws 2002, LB 1139, § 33; Laws 2009, LB192, § 8. Effective date August 30, 2009.

44-5262 Repealed. Laws 2009, LB 154, § 27.

44-5263 Board; report required; contents.

The board shall study and report at least every three years to the director on the effectiveness of the Small Employer Health Insurance Availability Act. The report shall analyze the effectiveness of the act in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace. The report shall address whether carriers, agents, and brokers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of the act. The report may contain recommendations for market conduct or other regulatory standards or action.

Source: Laws 1994, LB 1222, § 41; Laws 2009, LB154, § 11. Effective date August 30, 2009.

ARTICLE 53
HEALTH INSURANCE ACCESS

Section
44-5302. Legislative findings and declarations.
44-5303. Terms, defined.
44-5305. Policy or contract; eligibility.
44-5306. Policy or contract; eligibility; limitations.
44-5307. Policy or contract; benefits required; coverage authorized; prohibitions.

44-5302 Legislative findings and declarations.

The Legislature finds and declares that there is a significant number of Nebraskans who lack health insurance and that these uninsured people include many individuals and families who cannot afford the rising cost of medical care but do not qualify for the various income-based assistance programs. The lack of financial means of uninsured people and families to pay for their medical care leaves health care providers with uncollectible debts which are transferred to other patients and to insurers. It is the purpose and intent of the Legislature to provide a mechanism to allow insurers to provide basic levels of health insurance to those people who are uninsured and are not qualified for income-based assistance programs.

Source: Laws 1991, LB 419, § 30; Laws 2009, LB445, § 1.
Effective date August 30, 2009.

44-5303 Terms, defined.

For purposes of the Health Insurance Access Act:

(1) Insurer shall mean any insurance company as defined in section 44-103 authorized to transact health insurance business in the State of Nebraska or a health maintenance organization which has obtained a valid certificate of authority;

(2) Medicare shall mean parts A, B, C, and D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended;

(3) Provider shall mean any physician or hospital who is licensed or authorized in this state to furnish medical care or hospitalization to any individual;

(4) Spell of illness shall mean a continuous period as a hospital inpatient or successive periods as a hospital inpatient when the date of discharge and the following date of admission are less than sixty consecutive days apart; and

(5) Uninsured access coverage shall mean a policy of sickness and accident insurance or a contract for health care services covering individuals, with or without their dependents, issued by an insurer subject to the limitations and requirements in the act.

Source: Laws 1991, LB 419, § 31; Laws 2009, LB445, § 2.
Effective date August 30, 2009.

44-5305 Policy or contract; eligibility.

(1) An uninsured access coverage policy or contract shall limit eligibility to individuals or families 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) 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; Laws 2009, LB445, § 3.
Effective date August 30, 2009.

Cross References

Medical Assistance Act, see section 68-901.

44-5306 Policy or contract; eligibility; limitations.

(1) An individual or a family member shall not be eligible for initial or continued coverage under an uninsured access coverage policy or contract if he or she:

(a) Is eligible as an employee or dependent for group insurance coverage sponsored or maintained by an employer; or

(b) Is covered by any other type of hospital, surgical, or medical expense-incurred policy or health maintenance organization contract.

(2) An uninsured access coverage policy or contract may require evidence of insurability but shall not use underwriting guidelines that are more strict than those normally used by the insurer for its regular individual health insurance contracts.

Source: Laws 1991, LB 419, § 34; Laws 2009, LB445, § 4.
Effective date August 30, 2009.

44-5307 Policy or contract; benefits required; coverage authorized; prohibitions.

(1) An uninsured access coverage policy or contract may include hospital-only and surgical-only benefits which shall mean:

(a) Inhospital benefits for not less than thirty continuous days nor more than ninety continuous days for each spell of illness; and

(b) Surgical benefits for both inpatient and outpatient surgery.

(2) An uninsured access coverage policy or contract may include prescription drug benefit coverage.

(3) An uninsured access coverage policy or contract may include preventative health care coverage, including, but not limited to, primary care physician visits, immunizations for adults and children, laboratory and X-ray procedures, and preventative cancer screenings such as mammograms, cervical cancer screenings, and noninvasive colorectal or prostate screenings.

(4) An uninsured access coverage policy or contract may not:

(a) Use a definition of spell of illness more restrictive than the definition found in section 44-5303; or

(b) Use a definition of preexisting condition more restrictive than the definition normally used by the insurer for its regular individual health insurance contracts.

(5) Every uninsured access coverage policy or contract shall provide that the benefit payment shall be accepted as payment in full by the provider and there shall be no deductible or coinsurance charged to the insured.

Source: Laws 1991, LB 419, § 35; Laws 2009, LB445, § 5.
Effective date August 30, 2009.

ARTICLE 59
INSURERS EXAMINATION

Section
44-5904. Authority, scope, and scheduling of examinations.
44-5905. Conduct of examinations; record retention requirements.

44-5904 Authority, scope, and scheduling of examinations.

(1) The director or any of his or her examiners may conduct an examination under the Insurers Examination Act of any company incorporated in this state or in any other state or country admitted to or applying for admission to transact business in this state as often as the director in his or her sole discretion deems appropriate but shall at a minimum conduct an examination of every domestic insurer not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examination of a company, the director shall consider such matters as the results of financial statement analyses and ratios, changes in the company's management or ownership, actuarial opinions, reports of independent certified public accountants, the company's ability to meet and fulfill its obligations, the company's compliance with provisions of law, other facts relating to the company's business methods, the company's management and its dealings with its policyholders, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director conducts an examination under this section.

(2) For purposes of completing an examination of any company under the act, the director may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

Source: Laws 1993, LB 583, § 4; Laws 1998, LB 1035, § 12; Laws 2009, LB192, § 9.
Effective date August 30, 2009.

44-5905 Conduct of examinations; record retention requirements.

(1) Upon determining that an examination should be conducted, the director or his or her designee shall appoint one or more examiners to conduct 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 the director may deem appropriate.

(2)(a) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) of this section timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other

recordings relating to the property, assets, business, and affairs of the company being examined.

(b)(i)(A) Every company or person subject to the Insurers Examination Act shall retain all books, records, accounts, papers, documents, and computer or other recordings relating to the property, assets, financial accounts, and business of such company or person in a manner that permits examination of such books, records, accounts, papers, documents, and computer or other recordings for five years, or until the period of time in which the transaction took place has undergone a financial examination by the director, whichever is later, following the completion of a transaction relating to the property, assets, financial accounts, and business of such company or person.

(B) Every company or person subject to the act shall retain market conduct records for five years following the completion of a transaction relating to the insurance business and affairs of such company or person. For purposes of this subdivision, market conduct records means all books, records, accounts, papers, documents, and computer or other recordings relating to transactions with insureds, certificate holders, claimants, insurance producers, other insurers, subrogees, and subrogors and recordings related to its trade practices, underwriting, rate and form practices, advertising, regulatory matters, and other affairs of such company or person.

(ii) The books, records, accounts, papers, documents, and computer or other recordings described in subdivisions (2)(b)(i)(A) and (B) of this section and maintained in electronic, computer, micrographic, or other form shall be maintained in a form capable of accurate duplication on paper.

(c) The officers, directors, employees, and agents of the company 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 any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the director's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(d) For purposes of this subsection, officers, directors, employees, and agents shall include general agents, managing agents, attorneys in fact, organizers, promoters, loss adjusters, and any persons having a contract, written or oral, pertaining to the management or control of a company or any function thereof.

(3) The director or any of his or her examiners shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any 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. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, 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 and charged against, and be paid by, the company being examined.

(4) When conducting an examination under the Insurers Examination Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, loss-reserve specialists, or other professionals and specialists, the cost of which shall be borne by the company which is the subject of the examination.

(5) Nothing in the act shall be construed to limit the director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) 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 company 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.

Source: Laws 1993, LB 583, § 5; Laws 1999, LB 259, § 12; Laws 2009, LB192, § 10.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 64

UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE

Section
44-6413. Uninsured and underinsured motorist coverages; exceptions; exclusions; requirements; rules and regulations.

44-6413 Uninsured and underinsured motorist coverages; exceptions; exclusions; requirements; rules and regulations.

(1) The uninsured and underinsured motorist coverages provided in the Uninsured and Underinsured Motorist Insurance Coverage Act shall not apply to:

(a) Bodily injury, sickness, disease, or death of the insured with respect to which the insured or his or her representative makes, without the written consent of the insurer, any settlement with or obtains any judgment against any person who may be legally liable for any injuries if such settlement adversely affects the rights of the insurer, except that this subdivision shall not apply to underinsured motorist coverage when the insured has given notice to the insurer, in compliance with subsection (2) of section 44-6412, and the insurer has failed to make the required payment to protect its right of subrogation;

(b) Bodily injury, sickness, disease, or death of an insured while occupying a vehicle owned by, but not insured by, the named insured or a spouse or relative residing with the named insured;

(c) Bodily injury, sickness, disease, or death of an insured while occupying an owned vehicle which is used as a public or livery conveyance and which is not insured as such;

(d) Bodily injury, sickness, disease, or death of an insured through being struck by a vehicle owned by the named insured or a spouse or relative residing with the named insured; and

(e) Bodily injury, sickness, disease, or death of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist.

(2) Insurers providing motor vehicle liability insurance coverage on an excess or umbrella basis or incidental to some other basic coverage shall not be required to offer, provide, or make available coverage conforming to the Uninsured and Underinsured Motorist Insurance Coverage Act.

(3) An insurer may make underinsured motorist coverage a part of uninsured motorist coverage.

(4) Nothing in the Uninsured and Underinsured Motorist Insurance Coverage Act shall be construed to prevent an insurer from offering, making available, or providing coverage under terms and conditions more favorable to its insured or in limits higher than are required by the act.

(5) No policy subject to the Uninsured and Underinsured Motorist Insurance Coverage Act shall define insured, for purposes of the uninsured and underinsured coverages provided in the act, so as to exclude any person occupying the insured motor vehicle with the express or implied permission of an insured.

(6) The Director of Insurance shall adopt and promulgate rules and regulations as are necessary to provide that the language relating to coverages described in the Uninsured and Underinsured Motorist Insurance Coverage Act is not unfair, inequitable, misleading, or deceptive and does not encourage misrepresentation of the coverage.

Source: Laws 1986, LB 573, § 12; R.S.1943, (1988), § 60-582; Laws 1994, LB 1074, § 13; Laws 2009, LB152, § 1.
Effective date August 30, 2009.

ARTICLE 66
INSURANCE FRAUD

Section
44-6604. Fraudulent insurance acts; enumerated.

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) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(11) 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

(12) 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; Laws 2009, LB208, § 2. Effective date August 30, 2009.

CHAPTER 45
INTEREST, LOANS, AND DEBT

Article.
1. Interest Rates and Loans.
(f) Loan Brokers. 45-190.
3. Installment Sales. 45-346.01, 45-348.
7. Residential Mortgage Licensing. 45-701 to 45-754.
9. Delayed Deposit Services Licensing Act. 45-922.
10. Nebraska Installment Loan Act. 45-1001 to 45-1033.02.

ARTICLE 1
INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section
45-190. Terms, defined.

(f) LOAN BROKERS

45-190 Terms, defined.

For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

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

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

(5) Loan broker means any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, licensed or registered mortgage banker, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of an advance fee from a borrower, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of an advance fee from a borrower, assists a borrower in making an application to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Source: Laws 1981, LB 154, § 2; Laws 1982, LB 751, § 1; Laws 1985, LB 86, § 1; Laws 1989, LB 272, § 3; Laws 1993, LB 121, § 271; Laws 1993, LB 270, § 1; Laws 1995, LB 599, § 11; Laws 2001, LB 53, § 87; Laws 2003, LB 131, § 26; Laws 2009, LB327, § 16. Operative date August 30, 2009.

ARTICLE 3

INSTALLMENT SALES

Section

45-346.01. Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated.
45-348. License; renewal; licensee; duties; fee; voluntary surrender of license.

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 as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the Department 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; Laws 2009, LB327, § 17. Operative date August 30, 2009.

45-348 License; renewal; licensee; duties; 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 and submit such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit. 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; Laws 2009, LB327, § 18.
Operative date August 30, 2009.

ARTICLE 7

RESIDENTIAL MORTGAGE LICENSING

Section
45-701. Act, how cited.
45-702. Terms, defined.
45-703. Act; exemptions.
45-704. Registration required; registration statement; fee; procedure; bond; registrant; duties; renewal.
45-705. License or registration required; application; fees; background investigation; registered agent.
45-706. License; issuance; denial; appeal; renewal; fees.
45-707. Transferred to section 45-742.
45-708. Transferred to section 45-747.
45-709. Transferred to section 45-724.
45-710. Transferred to section 45-741.
45-711. Transferred to section 45-737.
45-712. Transferred to section 45-738.
45-713. Transferred to section 45-739.
45-714. Transferred to section 45-740.
45-715. Transferred to section 45-750.
45-716. Transferred to section 45-751.
45-717. Transferred to section 45-744.
45-717.01. Transferred to section 45-743.
45-717.02. Transferred to section 45-746.
45-718. Transferred to section 45-745.
45-719. Transferred to section 45-752.
45-720. Transferred to section 45-753.
45-721. Transferred to section 45-754.
45-722. Transferred to section 45-725.
45-723. Transferred to section 45-748.
45-724. Surety bond; requirements.
45-725. Acquisition of control of mortgage banking business; procedure; fee; disapproval; hearing.
45-726. Reports.
45-727. Mortgage loan originator; license required; loan processor or underwriter; license required.
45-728. License; application; form; fee; use of nationwide registry.

Section
45-729. Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal.
45-730. Prelicensing education requirement; course review and approval; relicensure requirements.
45-731. Written test requirement; subject areas; retaking test; limitations.
45-732. License; term; renewal; minimum standards for renewal; fee; denial; appeal.
45-733. Mortgage loan originator; continuing education; continuing education courses; review and approval; credit as instructor; relicensure requirements.
45-734. Mortgage loan originator license; inactive status; duration; renewal; reactivation.
45-735. Mortgage loan originator; employee or independent agent; restriction on activities; written agency contract; notification to department; fee; notice of termination.
45-736. Unique identifier; use.
45-737. Licensee; duties.
45-738. Licensee; failure to deliver abstract of title.
45-739. Transfer of servicing rights; duties.
45-740. Prohibited acts; violation; penalty; civil liability.
45-741. Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.
45-742. License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.
45-743. Violations; administrative fine; costs; lien.
45-744. Cease and desist orders; department; powers; judicial review; violation; penalty.
45-745. Appeals.
45-746. Enforcement of act; director; powers; construction of act; failure to comply with act; effect.
45-747. Prohibited acts; penalty.
45-748. License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.
45-749. Information sharing; privilege and confidentiality; limitations; director; powers; applicability of section.
45-750. Department; duties; rules and regulations.
45-751. Money collected; disposition.
45-752. Act; liberal construction.
45-753. Personal jurisdiction; when.
45-754. Loans subject to act.

45-701 Act, how cited.

Sections 45-701 to 45-754 shall be known and may be cited as the Residential Mortgage Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40; Laws 2009, LB328, § 3. Effective date April 23, 2009.

45-702 Terms, defined.

For purposes of the Residential Mortgage Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a trust deed;

(2) Branch office means any location at which the business of a mortgage banker or mortgage loan originator is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any

third-party or home-based locations that mortgage loan originators, agents, and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(4) Clerical or support duties means tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

(5) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

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

(7) Depository institution means any person (a) organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, or industrial banks or similar depository institutions which the Board of Directors of the Federal Deposit Insurance Corporation finds to be operating substantially in the same manner as an industrial bank and (b) engaged in the business of receiving deposits other than funds held in a fiduciary capacity, including, but not limited to, funds held as trustee, executor, administrator, guardian, or agent;

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

(9) Dwelling means a residential structure located or intended to be located in this state that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(10) Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(11) Immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships;

(12) Installment loan company means any person licensed pursuant to the Nebraska Installment Loan Act;

(13) Licensee means any person licensed under the Residential Mortgage Licensing Act as either a mortgage banker or mortgage loan originator;

(14) Loan processor or underwriter means an individual who (a) performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(15) Mortgage banker or mortgage banking business means any person (a) other than (i) a person exempt under section 45-703, (ii) an individual who is a loan processor or underwriter, or (iii) an individual who is licensed in this state as a mortgage loan originator and (b) who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for a residential mortgage loan;

(16)(a) Mortgage loan originator means an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan.

(b) Mortgage loan originator does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 45-727, (ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nebraska law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, and (iii) a person solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(17) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(18) Nontraditional mortgage product means any residential mortgage loan product other than a thirty-year fixed rate residential mortgage loan;

(19) Offer means every attempt to provide, offer to provide, or solicitation to provide a residential mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(20) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(21) Real estate brokerage activity means any activity that involves offering or providing real estate brokerage services to the public, including (a) acting as a

real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property, (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property, (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction, (d) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate salesperson or real estate broker under any applicable law, and (e) offering to engage in any activity or act in any capacity described in subdivision (a), (b), (c), or (d) of this subdivision;

(22) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(23) Registered mortgage loan originator means any individual who (a) meets the definition of mortgage loan originator and is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(24) Registrant means a person registered pursuant to section 45-704;

(25) Residential mortgage loan means any loan or extension of credit, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(26) Residential real estate means any real property located in this state upon which is constructed or intended to be constructed a dwelling;

(27) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a residential mortgage loan;

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

(29) Unique identifier means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 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; Laws 2009, LB328, § 4.
Effective date April 23, 2009.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Installment Loan Act, see section 45-1001.

45-703 Act; exemptions.

(1) Except as provided in section 45-704, the following shall be exempt from the Residential Mortgage Licensing Act:

(a) Any depository institution or wholly owned subsidiary thereof;

(b) Any registered bank holding company;

(c) Any insurance company that is subject to regulation by the Department of Insurance and is either (i) organized or chartered under the laws of Nebraska or (ii) organized or chartered under the laws of any other state if such insurance company has a place of business in Nebraska;

(d) Any person licensed to practice law in this state who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is engaging in real estate brokerage activities unless such person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(f) Any registered mortgage loan originator when acting for an entity described in subdivision (23)(a)(i), (ii), or (iii) of section 45-702;

(g) Any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business in any capacity other than as a purchaser or servicer of an installment contract, as defined in section 45-335, which is secured by a mobile home or trailer;

(h) Any trust company chartered pursuant to the Nebraska Trust Company Act;

(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 individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(k) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(l) Any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter.

(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; Laws 2009, LB328, § 5.
Effective date April 23, 2009.

Cross References

Nebraska Installment Sales Act, see section 45-334.
Nebraska Trust Company Act, see section 8-201.01.

45-704 Registration required; registration statement; fee; procedure; bond; registrant; duties; renewal.

(1) Notwithstanding any other provision of the Residential Mortgage Licensing Act, no person exempt from licensing under section 45-703 who employs or enters into an independent agent agreement with an individual who is required to obtain a mortgage loan originator license in this state pursuant to section 45-727 shall act as a mortgage banker 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 registrant shall maintain a surety bond as required by section 45-724, submit reports of condition as required by section 45-726, and comply with the requirements of section 45-735 pertaining to the employment of mortgage loan originators.

(6) A registration under this section shall not be assignable.

(7) After original registration, all registrations shall remain in full force and effect until the next succeeding December 31. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of one hundred dollars.

(8)(a) If a registrant fails to maintain a surety bond as required by section 45-724, the department may issue a notice of cancellation of the registration.

(b) 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; Laws 2009, LB328, § 6.
Effective date April 23, 2009.

45-705 License or registration required; application; fees; background investigation; registered agent.

(1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed as a mortgage banker, is registered with the department as provided in section 45-704, is licensed under the

Nebraska Installment Loan Act, or is otherwise exempt from the act pursuant to section 45-703.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on 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 which the applicant intends to use in this state, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, 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 (2) of section 45-748.

(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 Nationwide Mortgage Licensing System and Registry. 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 (2) of section 45-748, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license as a mortgage banker granted under the Residential Mortgage 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; Laws 2009, LB328, § 7.
Effective date April 23, 2009.

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 as a mortgage banker, 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 Residential Mortgage 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 45-724; and (c) payment of the required fee.

(2) If the director determines that the mortgage banker license application 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 mortgage banker 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 mortgage banker license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act. The director may deny an application for a mortgage banker license application if (a) he or she determines that the applicant does not meet the conditions of subsection (1) of this section or (b) 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 (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding December 31. Mortgage banker licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage banker licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department and the information contained in any supplemental material previously provided to the department remains true and correct.

(b) For the annual renewal of a license to conduct a mortgage banking business under the Residential Mortgage 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 (2) of section 45-748.

(4) The director may require a mortgage banker 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; Laws 2009, LB328, § 8.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-707 Transferred to section 45-742.

45-708 Transferred to section 45-747.

45-709 Transferred to section 45-724.

45-710 Transferred to section 45-741.

45-711 Transferred to section 45-737.

45-712 Transferred to section 45-738.

45-713 Transferred to section 45-739.

45-714 Transferred to section 45-740.

45-715 Transferred to section 45-750.

45-716 Transferred to section 45-751.

45-717 Transferred to section 45-744.

45-717.01 Transferred to section 45-743.

45-717.02 Transferred to section 45-746.

45-718 Transferred to section 45-745.

45-719 Transferred to section 45-752.

45-720 Transferred to section 45-753.

45-721 Transferred to section 45-754.

45-722 Transferred to section 45-725.

45-723 Transferred to section 45-748.

45-724 Surety bond; requirements.

(1) Except as provided in subsection (2) of this section, an applicant for a mortgage banker license or registration 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 surety bond also shall cover all mortgage loan originators who are employees or independent agents of the applicant. 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 or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, 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) Upon filing of the mortgage report of condition required by section 45-726, a mortgage banker licensee or registrant shall maintain or increase its surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with the following table. A licensee may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department.

Dollar Amount of Closed Residential Mortgage Loans	Surety Bond Required
$0.00 to $5,000,000.00	$100,000.00
$5,000,000.01 to $10,000,000.00	$125,000.00
$10,000,000.01 to $25,000,000.00	$150,000.00
Over $25,000,000.00	$200,000.00

(3) Should the department determine that a mortgage banker licensee or registrant does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification to the mortgage banker licensee or registrant requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) of this section.

(4) 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 subsections (1) and (2) 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.

Source: Laws 1989, LB 272, § 12; Laws 1993, LB 217, § 2; Laws 2003, LB 218, § 6; Laws 2006, LB 876, § 31; R.S.Supp.,2008, § 45-709; Laws 2009, LB328, § 9.
Effective date April 23, 2009.

45-725 Acquisition of control of mortgage banking business; procedure; fee; 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 Residential Mortgage 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 indicate 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 and rules and regulations adopted and promulgated by the department under the 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; R.S.Supp.,2008, § 45-722; Laws 2009, LB328, § 10.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-726 Reports.

Each licensed mortgage banker, registrant, and installment loan company shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the department may require.

Source: Laws 2009, LB328, § 11.
Effective date April 23, 2009.

45-727 Mortgage loan originator; license required; loan processor or underwriter; license required.

(1) An individual, unless specifically exempted from the Residential Mortgage Licensing Act under section 45-703, shall not engage in, or offer to engage in, the business of a mortgage loan originator with respect to any residential real estate or dwelling located or intended to be located in this state without first obtaining and maintaining annually a license under the act. Each licensed mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section is July 31, 2010.

(3) An independent agent shall not engage in the activities as a loan processor or underwriter unless such independent agent loan processor or underwriter obtains and maintains a license under subsection (1) of this section. Each independent agent loan processor or underwriter licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(4) For the purposes of implementing an orderly and efficient licensing process, the director may adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures.

Source: Laws 2009, LB328, § 12.
Effective date April 23, 2009.

45-728 License; application; form; fee; use of nationwide registry.

(1) An applicant for a license shall apply in a form as prescribed by the director.

(2) The application for a license as a mortgage loan originator shall be accompanied by an application fee of one hundred fifty dollars, plus the cost of the criminal history background check required by subsection (3) of this section and any processing fee allowed under subsection (2) of section 45-748.

(3) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(a) Fingerprints for submission to the Federal Bureau of Investigation and any other governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and

(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the director to obtain the following:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act, as the act existed on January 1, 2009; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(4) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivisions (3)(a) and (3)(b)(ii) of this section, the director may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any other governmental agency.

(5) For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of subdivisions (3)(b)(i) and (3)(b)(ii) of this section, the director may use the Nationwide

Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

Source: Laws 2009, LB328, § 13.
Effective date April 23, 2009.

45-729 Issuance of mortgage loan originator license; director; findings required; denial; notice; appeal.

(1) The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(b) The applicant has not been convicted of, or pleaded guilty or nolo contendere or its equivalent to, in a domestic, foreign, or military court:

(i) A misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the business of a mortgage banker, depository institution, or installment loan company unless such individual has received a pardon for such conviction; or

(ii) Any felony under state or federal law unless such individual has received a pardon for such conviction;

(c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Residential Mortgage Licensing Act. For purposes of this subsection, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The director may consider the following factors in making a determination as to financial responsibility:

(i) The applicant's current outstanding judgments except judgments solely as a result of medical expenses;

(ii) The applicant's current outstanding tax liens or other government liens and filings;

(iii) The applicant's foreclosures within the past three years; and

(iv) A pattern of seriously delinquent accounts within the past three years by the applicant;

(d) The applicant has completed the prelicensing education requirements described in section 45-730;

(e) The applicant has passed a written test that meets the test requirement described in section 45-731; and

(f) The applicant is covered by a surety bond as required pursuant to section 45-724 or a supplemental surety bond as required pursuant to section 45-1007.

(2) If the director determines that a mortgage loan originator license application 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 mortgage loan originator 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 mortgage loan originator license application pursuant to the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the act.

(3) A mortgage loan originator license shall not be assignable.

Source: Laws 2009, LB328, § 14.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-730 Prelicensing education requirement; course review and approval; relicensure requirements.

(1) In order to meet the prelicensing education requirement referred to in subdivision (1)(d) of section 45-729, an individual shall complete at least twenty hours of education approved in accordance with subsection (2) of this section, which shall include at least the following:

(a) Three hours of instruction in federal law and regulations regarding mortgage origination;

(b) Three hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

(4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (1) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(6) An individual who previously held a mortgage loan originator license applying to be licensed again shall prove that he or she has either (a) completed all of the continuing education requirements for the year in which the license was last held or (b) made up any deficiency in continuing education as provided by subsection (8) of section 45-733.

Source: Laws 2009, LB328, § 15.
Effective date April 23, 2009.

45-731 Written test requirement; subject areas; retaking test; limitations.

(1) In order to meet the written test requirement referred to in subdivision (1)(e) of section 45-729, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(a) Ethics;

(b) Federal laws and regulations pertaining to mortgage origination;

(c) State laws and regulations pertaining to mortgage origination; and

(d) Federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(a) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(b) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(c) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(d) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Source: Laws 2009, LB328, § 16.
Effective date April 23, 2009.

45-732 License; term; renewal; minimum standards for renewal; fee; denial; appeal.

(1) All initial mortgage loan originator licenses shall remain in full force and effect until the next succeeding December 31. Mortgage loan originator licenses may be renewed annually by submitting to the director a request for renewal and any supplemental material as required by the director. The mortgage loan originator licensee shall certify that the information contained in the license application, as subsequently amended, that is on file with the department, and the information contained in any supplemental material previously provided to the department, remains true and correct.

(2) The minimum standards for license renewal for mortgage loan originators shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under subdivisions (1)(a) through (f) of section 45-729;

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 45-733; and

(c) The mortgage loan originator has paid all required fees for renewal of the license.

(3) For the annual renewal of a mortgage loan originator license, the fee shall be one hundred twenty-five dollars, plus the cost of the criminal history background check required by the director and any processing fee allowed under subsection (2) of section 45-748.

(4) Except as provided in subsection (4) of section 45-734 and subsection (4) of section 45-742, should the director conclude that a mortgage loan originator does not meet the minimum standards for license renewal, the director shall deny the renewal application. A decision of the director denying a renewal of a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the act.

Source: Laws 2009, LB328, § 17.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-733 Mortgage loan originator; continuing education; continuing education courses; review and approval; credit as instructor; relicensure requirements.

(1) A mortgage loan originator shall complete annually at least eight hours of education approved in accordance with subsection (2) of this section, which shall include at least:

(a) Three hours of instruction in federal laws and regulations regarding mortgage origination;

(b) Two hours of instruction in ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(c) Two hours of instruction related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator, an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) A licensed mortgage loan originator:

(a) Shall only receive credit for a continuing education course in the year in which the course is taken except as provided in subsection (8) of this section; and

(b) Shall not take the same approved course in the same or consecutive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (1)(a), (b), and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in this state.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new license or renewal license. Such individual may make up any deficiency in continuing education as established by rule, regulation, or order of the director if such individual meets the requirements of subdivision (2)(a) of section 45-732 and has paid the new application fee as provided by subsection (2) of section 45-728 or the reinstatement fee as provided by subdivision (4)(b) of section 45-742.

Source: Laws 2009, LB328, § 18.
Effective date April 23, 2009.

45-734 Mortgage loan originator license; inactive status; duration; renewal; reactivation.

(1) A mortgage loan originator whose license is placed on inactive status under this section shall not act as a mortgage loan originator in this state until such time as the license is reactivated.

(2) The department shall place a mortgage loan originator license on inactive status upon the occurrence of one of the following:

(a) Upon receipt of a notice from either the licensed mortgage banker, registrant, installment loan company, or mortgage loan originator that the mortgage loan originator's relationship as an employee or independent agent of a licensed mortgage banker or installment loan company has been terminated;

(b) Upon the cancellation of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the cancellation of the employing installment loan company's license pursuant to subdivision (3)(b) of section 45-1033 for failure to maintain the required surety bond;

(c) Upon the voluntary surrender of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the voluntary surrender of the employing installment loan company's license pursuant to section 45-1032;

(d) Upon the expiration of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the expiration of the employing installment loan company's license pursuant to subdivision (3)(a) of section 45-1033 if such mortgage loan originator has renewed his or her license pursuant to section 45-732;

(e) Upon the revocation or suspension of the employing licensed mortgage banker's license pursuant to section 45-742 or upon the revocation or suspension of the employing installment loan company's license pursuant to subsection (1) of section 45-1033; or

(f) Upon the cancellation, surrender, or expiration of the employing registrant's registration with the department.

(3) If a mortgage loan originator license becomes inactive under this section, the license shall remain inactive until the license expires, the licenseholder surrenders the license, the license is revoked or suspended pursuant to section 45-742, or the license is reactivated.

(4) A mortgage loan originator who holds an inactive mortgage loan originator license may renew such inactive license if he or she remains otherwise eligible for renewal pursuant to section 45-732 except for being covered by a surety bond pursuant to subdivision (1)(f) of section 45-729. Such renewal shall not reactivate the license.

(5) The department shall reactivate a mortgage loan originator license upon receipt of a notice pursuant to section 45-735 that the mortgage loan originator licensee has been hired as a mortgage loan originator by a licensed mortgage banker, registrant, or installment loan company and if such mortgage loan originator is covered by a surety bond pursuant to subdivision (1)(f) of section 45-729.

Source: Laws 2009, LB328, § 19.
Effective date April 23, 2009.

45-735 Mortgage loan originator; employee or independent agent; restriction on activities; written agency contract; notification to department; fee; notice of termination.

(1) A mortgage loan originator shall be an employee or independent agent of a single licensed mortgage banker, registrant, or installment loan company that shall directly supervise, control, and maintain responsibility for the acts and omissions of the mortgage loan originator.

(2) A mortgage loan originator shall not engage in mortgage loan origination activities at any location that is not a main office location of a licensed mortgage banker, registrant, or installment loan company or a branch office of a licensed mortgage banker or registrant. The licensed mortgage banker, registrant, or installment loan company shall designate the location or locations at which each mortgage loan originator is originating residential mortgage loans.

(3) Any licensed mortgage banker, registrant, or installment loan company who engages an independent agent as a mortgage loan originator shall maintain a written agency contract with such mortgage loan originator. Such written agency contract shall provide that the mortgage loan originator is originating loans exclusively for the licensed mortgage banker, registrant, or installment loan company.

(4) A licensed mortgage banker, registrant, or installment loan company that has hired a licensed mortgage loan originator as an employee or entered into an independent agent agreement with such licensed mortgage loan originator shall provide notification to the department as soon as reasonably possible after entering into such relationship, along with a fee of fifty dollars. The employing

entity shall not allow the mortgage loan originator to conduct such activity in this state prior to such notification to the department and confirmation that the department has received notice of the termination of the mortgage loan originator's prior employment.

(5) A licensed mortgage banker, registrant, or installment loan company shall notify the department no later than ten days after the termination, whether voluntary or involuntary, of a mortgage loan originator unless the mortgage loan originator has previously notified the department of the termination.

Source: Laws 2009, LB328, § 20.
Effective date April 23, 2009.

45-736 Unique identifier; use.

The unique identifier of any individual originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21.
Effective date April 23, 2009.

45-737 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 residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within 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 residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction has invoked suspension or revocation procedures against the licensee;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents; or

(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, depository institution business, or installment loan company business or (ii) any felony under state or federal law; and

(10) Notify the director in writing or through an electronic method as prescribed by the director within thirty days after the occurrence of any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(d) 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; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22.
Effective date April 23, 2009.

45-738 Licensee; failure to deliver abstract of title.

If a licensee in connection with a residential mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty business days of the borrower's request made by certified mail, return receipt requested, in connection with a proposed sale of the real property, the borrower may authorize the preparation of a new abstract of title to the real property and the person failing to deliver the original abstract shall pay the borrower the reasonable costs of the preparation of the new abstract of title. If a borrower brings an action against the person failing to deliver an abstract of title to recover the payment made, the borrower shall also be entitled to recover reasonable attorney's fees and court costs incurred in the action.

Source: Laws 1989, LB 272, § 15; R.S.1943, (2004), § 45-712; Laws 2009, LB328, § 23.
Effective date April 23, 2009.

45-739 Transfer of servicing rights; duties.

Not less than fifteen days prior to the effective date of the transfer of servicing rights involving any residential mortgage loan, the licensee transferring the servicing rights shall send a written notice of transfer to each borrower which shall include:

(1) The effective date of the transfer;

(2) The name, address, and telephone number of the transferee and the name of a referral person or department of the transferee;

(3) Instructions concerning payments made before the effective date of the transfer; and

(4) Instructions concerning payments made after the effective date of the transfer.

The provisions of this section shall not apply when the licensee transferring the servicing rights has provided the borrower with a written notice of transfer at the time of closing on the residential mortgage loan.

Source: Laws 1989, LB 272, § 16; Laws 1996, LB 1053, § 12; R.S.1943, (2004), § 45-713; Laws 2009, LB328, § 24.
Effective date April 23, 2009.

45-740 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 trust deed or other loan documents;

(b) Delay closing of a residential 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 residential mortgage loan or a borrower to take a residential 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 residential mortgage loan or a borrower material facts, terms, or conditions of a residential mortgage loan to which the licensee is a party;

(e) Fail to make disclosures as required by the Residential Mortgage Licensing Act and any other applicable state or federal law including regulations thereunder;

(f) 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 residential mortgage loan;

(g) Receive compensation for acting as a mortgage banker or mortgage loan originator 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 residential 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 or mortgage loan originator and for acting as a real estate broker or agent;

(h) 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 residential mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

(i) 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;

(j) 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, trust deeds, or other documents or things of value which the licensee was not entitled to retain;

(k) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

(l) Collect fees and charges on funds other than new funds if the licensee makes a residential mortgage loan to refinance an existing residential mortgage loan to a current borrower of the licensee within twelve months after the previous residential mortgage loan made by the licensee;

(m) 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;

(n) 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 residential 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;

(o) Falsify any documentation relating to a residential mortgage loan or a residential mortgage loan application;

(p) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or any portion of such existing loan or debt;

(q) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a residential mortgage loan;

(r) Obtain a signature on a document required to be notarized in connection with a residential mortgage loan or a residential mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained; or

(s) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(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 residential mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the residential 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; R.S.Supp.,2008, § 45-714; Laws 2009, LB328, § 25.
Effective date April 23, 2009.

45-741 Director; examine documents and records; investigate violations or complaints; director; powers; costs; confidentiality.

(1) The director may examine documents and records maintained by a licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act. The director may investigate complaints about a licensee, registrant, individual, or person subject to the act. The director may investigate reports of alleged violations of the act, any federal law governing residential mortgage loans, or any rule, regulation, or order of the director under the act. For purposes of investigating violations or complaints arising under the act or for the purposes of examination, the director may review, investigate, or examine any licensee, individual, or person subject to the act as often as necessary in order to carry out the purposes of the act.

(2) For purposes of any investigation, examination, or proceeding, including, but not limited to, initial licensing, license renewal, license suspension, license conditioning, or license revocation, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(a) Criminal, civil, and administrative history information;

(b) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act, as the act existed on January 1, 2009; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(3) Each licensee, registrant, individual, or person subject to the Residential Mortgage Licensing Act shall make available to the director upon request the books, accounts, records, files, or documents relating to the operations of such licensee, individual, or person subject to the act. The director shall have access to such books, accounts, records, files, and documents and may interview the

officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to the act, concerning their business.

(4) Each licensee, registrant, individual, or person subject to the act shall make or compile reports or prepare other information as instructed by the director in order to carry out the purposes of this section, including, but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section.

(5) The director may send a notice of investigation or inquiry request for information to a licensee. 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 act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(6) For the purpose of any investigation, examination, or proceeding under the 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.

(7) In conducting an examination or investigation 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.

(8) In order to carry out the purposes of this section, the director may:

(a) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(b) Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to the act;

(c) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or

(d) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to the act in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

(9) If the director receives a complaint or other information concerning noncompliance with the act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(10) No licensee, individual, or person subject to investigation or examination under this section shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(11) The total charge for an examination or investigation shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(12) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(13) Complaint files shall be deemed public records.

(14) The authority of this section shall remain in effect, whether such a licensee, individual, or person subject to the Residential Mortgage Licensing Act acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

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; R.S.Supp.,2008, § 45-710; Laws 2009, LB328, § 26.
Effective date April 23, 2009.

45-742 License; suspension or revocation; administrative fine; procedure; surrender; cancellation; expiration; effect; reinstatement.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, suspend or revoke any license issued under the Residential Mortgage 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 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 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) or (2) of section 45-741 or has refused or failed to comply with subsection (5) of section 45-741 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 45-737 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, depository institution business, or installment loan company 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 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 knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license;

(j) The licensee has violated the written restrictions or conditions under which the license was issued;

(k) 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, depository institution business, or installment loan company business or (ii) any felony under state or federal law;

(l) The licensee has had a similar license revoked in any other jurisdiction; or

(m) 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 and the rules and regulations adopted and promulgated under the 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 45-743 for acts committed before the surrender.

(4)(a) If a licensee fails to (i) renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section or (ii) pay the required fee for renewal of the license, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) The director may adopt by rule, regulation, or order procedures for the reinstatement of licenses for which a notice of expiration was issued in accordance with subdivision (a) of this subsection. Such procedures shall be consistent with standards established by the Nationwide Mortgage Licensing System and Registry. The fee for reinstatement shall be the same fee as the fee for the initial license application.

(c) If a licensee fails to maintain a surety bond as required by section 45-724, 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 45-743 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; R.S.Supp.,2008, § 45-707; Laws 2009, LB328, § 27.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-743 Violations; administrative fine; costs; lien.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated under the 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 45-737, 45-740, and 45-742 or otherwise violated the Residential Mortgage Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-742.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act, that any person has knowingly committed any act

prohibited by section 45-742 or otherwise violated the Residential Mortgage 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; R.S.Supp.,2008, § 45-717.01; Laws 2009, LB328, § 28.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-744 Cease and desist orders; department; powers; judicial review; violation; penalty.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Residential Mortgage 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 and the rules and regulations adopted and promulgated under the 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.

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; R.S.Supp.,2008, § 45-717; Laws 2009, LB328, § 29.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-745 Appeals.

In addition to any other remedy a licensee may have, any licensee or any person considering himself or herself aggrieved by any action of the department under the Residential Mortgage Licensing Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1989, LB 272, § 21; R.S.1943, (2004), § 45-718; Laws 2009, LB328, § 30.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-746 Enforcement of act; director; powers; construction of act; failure to comply with act; effect.

(1) The director may request the Attorney General to enforce the Residential Mortgage 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 permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(2) Except when expressly authorized, there shall be no private cause of action for any violation of the act.

(3) Nothing in the 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.

(4) Failure to comply with the act shall not affect the validity or enforceability of any residential mortgage loan. A person acquiring a residential mortgage loan or an interest in a residential mortgage loan is not required to ascertain the extent of compliance with the act.

Source: Laws 2006, LB 876, § 35; R.S.Supp.,2008, § 45-717.02; Laws 2009, LB328, § 31.
Effective date April 23, 2009.

45-747 Prohibited acts; penalty.

(1) Any person required to be licensed or registered under the Residential Mortgage Licensing Act who, without first obtaining a license or registration under the act or while such license is on inactive status or expired or has been suspended, revoked, or canceled 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 or mortgage loan originator 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, depository institution business, or

installment loan company 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 act, is guilty of a Class I misdemeanor.

Source: Laws 1989, LB 272, § 11; Laws 1999, LB 396, § 34; Laws 2007, LB124, § 44; R.S.Supp.,2008, § 45-708; Laws 2009, LB328, § 32. Effective date April 23, 2009.

45-748 License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.

(1) The department shall require mortgage bankers, registrants, and mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements, as necessary. The requirements may include, but not be limited to:

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with the prelicensure education and testing and continuing education requirements as provided in the Residential Mortgage Licensing Act;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-749.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2007, LB124, § 50; R.S.Supp.,2008, § 45-723; Laws 2009, LB328, § 33.
Effective date April 23, 2009.

45-749 Information sharing; privilege and confidentiality; limitations; director; powers; applicability of section.

In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or by order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage bankers and mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Source: Laws 2009, LB328, § 34.
Effective date April 23, 2009.

45-750 Department; duties; rules and regulations.

(1) The department shall be responsible for the administration and enforcement of the Residential Mortgage 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.

Source: Laws 1989, LB 272, § 18; Laws 2003, LB 218, § 10; Laws 2007, LB124, § 48; R.S.Supp.,2008, § 45-715; Laws 2009, LB328, § 35.
Effective date April 23, 2009.

45-751 Money collected; disposition.

(1) All fees, charges, and costs collected by the department pursuant to the Residential Mortgage Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) The department shall remit fines collected under the Residential Mortgage Licensing Act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

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; R.S.Supp.,2008, § 45-716; Laws 2009, LB328, § 36.
Effective date April 23, 2009.

45-752 Act; liberal construction.

The Residential Mortgage Licensing Act shall be construed liberally so as to effectuate its purposes.

Source: Laws 1989, LB 272, § 22; R.S.1943, (2004), § 45-719; Laws 2009, LB328, § 37.
Effective date April 23, 2009.

45-753 Personal jurisdiction; when.

Application for a license as a mortgage banker, for registration as a mortgage banker, or for a license as a mortgage loan originator pursuant to the Residential Mortgage Licensing Act shall constitute sufficient contact with this state for the exercise of personal jurisdiction in any action arising under the act.

Source: Laws 1989, LB 272, § 23; R.S.1943, (2004), § 45-720; Laws 2009, LB328, § 38.
Effective date April 23, 2009.

45-754 Loans subject to act.

Any residential mortgage loan made with respect to real property located in this state shall be subject to the Residential Mortgage Licensing Act and all other applicable laws of this state, notwithstanding the place of execution, either nominal or real, of such residential mortgage loan.

Source: Laws 1989, LB 272, § 24; R.S.1943, (2004), § 45-721; Laws 2009, LB328, § 39.
Effective date April 23, 2009.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section
45-922. Licensee; disciplinary actions; failure to renew.

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 thirty 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; Laws 2009, LB327, § 19. Operative date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 10
NEBRASKA INSTALLMENT LOAN ACT

Section
45-1001. Act, how cited.
45-1002. Terms, defined; act; applicability.
45-1007. Installment loans; license; bond.
45-1008. License; issuance; requirements; term.
45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.
45-1018. Licensees; reports.
45-1019. Cease and desist order; hearing; judicial review; enforcement; violation; penalty.
45-1024. Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.
45-1025. Installment loans; additional charges authorized; loan period; violation; effect.
45-1033. License; administrative fine; disciplinary actions; failure to renew.
45-1033.01. License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.
45-1033.02. Information sharing; privilege and confidentiality; limitations; director; powers; applicability of section.

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; Laws 2009, LB328, § 40.
Effective date April 23, 2009.

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) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

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

(d) 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;

(e) 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;

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

(g) Financial institution has the same meaning as in section 8-101;

(h) Licensee means any person who obtains a license under the act;

(i)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(j) Nationwide Mortgage Licensing System and Registry means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies;

(k) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(l) 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.

(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; Laws 2009, LB328, § 41.
Effective date April 23, 2009.

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)(a) Except as provided in subsection (3) of this section, a licensee who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain the surety bond required by subsection (1) of this section and a supplemental surety bond. The supplemental surety bond posted by such licensee shall cover all mortgage loan originators who are employees or independent agents of such licensee. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such licensee arising from a transaction involving a residential mortgage loan, as defined in section 45-702, or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the licensee. The initial amount of the supplemental surety bond shall be one hundred thousand dollars.

(b) Upon filing of the mortgage report of condition required by section 45-1018, a licensee shall maintain or increase its supplemental surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with the following table. A licensee may decrease its supplemental surety bond in accordance with the following table if the supplemental surety bond required is less than the amount of the supplemental surety bond on file with the department.

Dollar Amount of Closed Residential Mortgage Loans	Surety Bond Required
$0.00 to $5,000,000.00	$100,000.00
$5,000,000.01 to $10,000,000.00	$125,000.00
$10,000,000.01 to $25,000,000.00	$150,000.00
Over $25,000,000.00	$200,000.00

(3)(a) A person who has been issued multiple licenses pursuant to section 45-1010 and who employs or enters into an independent agent agreement with an individual required to obtain a mortgage loan originator license pursuant to the Residential Mortgage Licensing Act shall maintain a surety bond for each license that he, she, or it holds as required in subsection (1) of this section and shall also post one supplemental surety bond which shall cover all licenses held by such person. The supplemental surety bond posted by such person shall cover all mortgage loan originators who are employees or independent agents of such person. The supplemental surety bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against such person arising from a transaction involving a residential mortgage loan or against an individual who is a mortgage loan originator employed by, or in an independent agent relationship with, the person. The amount of such supplemental surety bond shall be as follows:

(i) The initial supplemental surety bond shall be in the amount of one hundred thousand dollars; and

(ii) Upon filing of the mortgage report of condition required by section 45-1018, the person's supplemental surety bond shall be maintained in accordance with subdivision (2)(b) of this section. For purposes of calculating the amount of the bond that is required, the total dollar amount of the closed loans shall include all residential mortgage loans in this state closed by the person.

(b) A person who holds both one or more installment loan licenses pursuant to the Nebraska Installment Loan Act and a mortgage banker license pursuant to the Residential Mortgage Licensing Act shall not be required to post and maintain a supplemental surety bond if such person meets the following conditions:

(i) The person maintains a surety bond as provided in subsection (1) of this section for each installment loan license he, she, or it holds;

(ii) The person maintains a mortgage banker surety bond as provided in section 45-724; and

(iii) The mortgage banker surety bond covers all transactions involving residential mortgage loans, including such transactions done pursuant to the person's installment loan license or licenses.

(4) Should the department determine that a licensee does not maintain a supplemental surety bond in the amount required by subsection (2) or (3) of this section, the department shall give written notification to the licensee requiring him, her, or it to increase the surety bond within thirty days to the amount required by subsection (2) or (3) of this section.

(5) The bond or a substitute bond required by subsection (1) of this section 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; Laws 2009, LB328, § 42.
Effective date April 23, 2009.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

45-1008 License; issuance; requirements; term.

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following March 1 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act. Beginning January 1, 2010, initial licenses shall remain in full force and effect until the next succeeding December 31.

Source: Laws 1941, c. 90, § 12, p. 349; C.S.Supp.,1941, § 45-140; R.S. 1943, § 45-120; Laws 1993, LB 121, § 265; Laws 1997, LB 555, § 8; R.S.1943, (1998), § 45-120; Laws 2001, LB 53, § 36; Laws 2009, LB328, § 43.
Effective date April 23, 2009.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

(1) Except as provided in subsection (2) of this section, 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) Licenses which expire on March 1, 2010, shall be renewed until December 31, 2010, upon compliance with subsection (1) of this section. For such renewals, the department shall prorate the fees provided in subsection (1) of this section using a factor of ten-twelfths.

(3) 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 and the rules and regulations adopted and promulgated under the 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; Laws 2009, LB328, § 44.
Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-1018 Licensees; reports.

(1) Prior to December 31, 2010, a licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) Effective on January 1, 2011, a licensee shall submit a mortgage report of condition, including financial statements which report the licensee's earnings, as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53, § 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45.
Effective date April 23, 2009.

45-1019 Cease and desist order; hearing; judicial review; enforcement; violation; penalty.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Nebraska Installment Loan 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 and the rules and regulations adopted and promulgated by the department under the 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. 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 1941, c. 90, § 10, p. 349; C.S.Supp.,1941, § 45-138; R.S. 1943, § 45-132; Laws 1997, LB 555, § 14; R.S.1943, (1998), § 45-132; Laws 2001, LB 53, § 47; Laws 2009, LB328, § 46. Effective date April 23, 2009.

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 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; Laws 2009, LB328, § 47.
Effective date April 23, 2009.

45-1025 Installment loans; additional charges authorized; loan period; violation; effect.

(1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act.

(2)(a) Loans made by a licensee pursuant to subdivision (4) of section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not made on real property.

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 on real property are not subject to the Nebraska Installment Loan Act. A licensee making such loans shall comply with and be subject to the Residential Mortgage Licensing Act with respect to such loans, except that the licensee shall not be required to obtain a mortgage banker license under the Residential Mortgage Licensing Act.

(c) Any mortgage loan originator who works as an employee or independent agent of a licensee shall be required to obtain a mortgage loan originator license and shall be subject to the Residential Mortgage Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any 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 thereafter 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.

Source: Laws 1941, c. 90, § 16, p. 351; C.S.Supp.,1941, § 45-144; Laws 1943, c. 107, § 4, p. 371; R.S.1943, § 45-138; Laws 1953, c. 155, § 2, p. 490; Laws 1957, c. 193, § 2, p. 685; Laws 1963, Spec. Sess., c. 9, § 2, p. 108; Laws 1963, Spec. Sess., c. 7, § 10, p. 94; Laws 1971, LB 18, § 1; Laws 1979, LB 87, § 4; Laws 1982, LB 702, § 2; Laws 1984, LB 681, § 2; Laws 1994, LB 979, § 9; Laws 1997, LB 555, § 18; R.S.1943, (1998), § 45-138; Laws 2001, LB 53, § 53; Laws 2003, LB 218, § 15; Laws 2004, LB 999, § 41; Laws 2009, LB328, § 48.
Effective date April 23, 2009.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

45-1033 License; administrative fine; disciplinary actions; failure to renew.

(1) The director may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under the 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;

(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; or

(j) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license.

(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 and the rules and regulations adopted and promulgated by the department under the 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; Laws 2009, LB328, § 49. Effective date April 23, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

45-1033.01 License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; duties.

(1) The department shall require licensees to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but not be limited to:

(a) Background checks of mortgage bankers, registrants, and mortgage loan originators:

(i) Criminal history through fingerprint or other data bases;

(ii) Civil or administrative records;

(iii) Credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the Nebraska Installment Loan Act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to

collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report violations of the act pertaining to residential mortgage loans, as defined in section 45-702, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-1033.02.

(4) The director shall establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2009, LB328, § 50.
Effective date April 23, 2009.

45-1033.02 Information sharing; privilege and confidentiality; limitations; director; powers; applicability of section.

In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and state regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (1) of this section that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage bankers and mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Source: Laws 2009, LB328, § 51.
Effective date April 23, 2009.

CHAPTER 46
IRRIGATION AND REGULATION OF WATER

Article.
2. General Provisions.
(e) Adjudication of Water Rights. 46-226.
(f) Application for Water. 46-238.
(l) Intrabasin Transfers. 46-290, 46-291.
7. Nebraska Ground Water Management and Protection Act. 46-701 to 46-739.03.
16. Safety of Dams and Reservoirs Act. 46-1654.

ARTICLE 2
GENERAL PROVISIONS

(e) ADJUDICATION OF WATER RIGHTS

46-226. Determination of priority and amount of appropriation; duty of department; certain court orders; department; powers.

(f) APPLICATION FOR WATER

46-238. Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.

(l) INTRABASIN TRANSFERS

46-290. Appropriation; application to transfer or change; contents; approval.
46-291. Application; review; notice; contents; comments.

(e) ADJUDICATION OF WATER RIGHTS

46-226 Determination of priority and amount of appropriation; duty of department; certain court orders; department; powers.

(1) The department shall make proper arrangements for the determination of priorities of right to use the public waters of the state and determine the same. The method of determining the priority and amount of appropriation shall be fixed by the department.

(2)(a) The department is authorized to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state.

(b) The only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 7, p. 835; C.S.1922, § 8426; C.S.1929, § 81-6307; R.S.1943, § 46-226; Laws 2000, LB 900, § 95; Laws 2009, LB184, § 1.
Effective date August 30, 2009.

(f) APPLICATION FOR WATER

46-238 Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.

(1) Within twelve months after the approval of any application for water for irrigation, power, or other useful purpose by the department, the person making such application shall commence the excavation or construction of the works in which it is intended to divert the water and the actual construction of any water power plant and reservoir or reservoirs for storage in connection therewith and shall vigorously, diligently, and uninterruptedly prosecute such work to completion unless temporarily interrupted by some unavoidable and natural cause. A failure to comply with this section shall work a forfeiture of the appropriation and all rights under the appropriation. The cost of promotion and engineering work shall not be considered a part of the cost of construction, and the progress of the construction work shall be such that one-tenth of the total work shall be completed within one year from the date of approval of the application. The construction of all work required in connection with the proposed project shall be prosecuted in the manner described in this section and with such a force as shall assure the average rate of constructional progress necessary to complete such work or works within the time stipulated in the approval of such application, notwithstanding the ordinary delays and casualties that must be expected and provided against. A failure to carry on the construction of either an irrigation project or a water power project as outlined in this section shall work a forfeiture of the appropriation and all rights under the appropriation, and the department shall cancel such appropriation. The department shall have free access to all records, books, and papers of any irrigation or water power company, shall have the right to go upon the right-of-way and land of any such company, shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work when deemed advisable for physical valuation purposes.

(2) The department may extend, for reasonable lengths of time, the time for commencing excavation or construction, completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights as fixed in the approval of an application or otherwise for the appropriation of water. Such extension may be granted upon a petition to the department and the showing of reasonable cause. The department shall cause a notice of each petition received to be published at the petitioner's expense in at least one newspaper of general circulation in the county or counties of the appropriation once a week for three consecutive weeks. The department shall hold a hearing on the issue of extension on its own motion or if requested by any interested person. If a hearing is held, notice shall be given by certified mail to the applicant, to any person who requested a hearing, and to any person who requests notification of the hearing. The department may grant the extension in the absence of a hearing if no requests for a hearing are received. Any interested person may be made a party to such action. Any party affected by the decision on the petition may appeal directly to the Court of Appeals. Subsequent extensions may be made in the same manner.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 13, p. 838; C.S.1922, § 8432; C.S.1929, § 81-6313; R.S.1943, § 46-238; Laws 1957, c. 198, § 2, p. 698; Laws 1979, LB 545, § 1; Laws 1980, LB 649, § 1; Laws 1987, LB 140, § 8; Laws 1991, LB 278, § 1; Laws

1991, LB 732, § 107; Laws 2000, LB 900, § 113; Laws 2009, LB209, § 1.
Effective date August 30, 2009.

(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, trust deed, or other equivalent consensual security interest against the tract or tracts of 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; Laws 2009, LB477, § 1.
Effective date August 30, 2009.

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, trust deed, or other equivalent consensual security interest 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; Laws 2009, LB477, § 2.
Effective date August 30, 2009.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section
46-701. Act, how cited.
46-706. Terms, defined.
46-707. Natural resources district; powers; enumerated.
46-713. Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations; revaluation; hearing; notice.
46-714. River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; 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.
46-719. Interrelated Water Review Board; created; members; powers and duties.
46-720. Proceedings under prior law; transitional provisions.
46-739. Management area; controls authorized; procedure.
46-739.01. District; approval of certain transfers or program participation; report of title required; form; written consent of lienholder; rights of lienholder.
46-739.02. Transfer of right to use ground water; recording; recovery of cost; manner.
46-739.03. Natural resources district determination; effect.

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; Laws 2009, LB477, § 3.
Effective date August 30, 2009.

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;

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable;

(30) Certified irrigated acres means the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district; and

(31) Certified water uses means beneficial uses of ground water for purposes other than irrigation identified by a district pursuant to rules adopted by the district.

Source: Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9; Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1; Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2; Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5; Laws 1986, LB 894, § 21;Laws 1991, LB 51, § 1; Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279; Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1; Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657; Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190; Laws 2001, LB 135, § 1; Laws 2003, LB 93, § 1; R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46; Laws 2006, LB 1226, § 21; Laws 2009, LB477, § 4; Laws 2009, LB483, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB477, section 4, with LB483, section 2, to reflect all amendments.

Note: Changes made by LB483 became effective April 7, 2009. Changes made by LB477 became effective August 30, 2009.

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 the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

(d) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(g) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(h) 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; Laws 2009, LB477, § 5.
Effective date August 30, 2009.

46-713 Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations; revaluation; hearing; notice.

(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. The department is not required to perform an annual evaluation for a river basin, subbasin, or reach during the four years following a status change in such river basin, subbasin, or reach under subsection (12) of section 46-714.

(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 as-

sessed. 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)(a) 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 showing that (i) 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, (ii) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (iii) 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 July 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 July 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.

(b) If the reevaluation results in a different determination by the department, then (i) the department shall notify, by certified mail, the affected natural resources districts and any irrigation 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 of the preliminary change in the determination and (ii) the department shall hold one or more public hearings not more than ninety days after the publication of the notice required in subdivision (b)(i) of this subsection. Notice of the hearings shall be provided in the same manner as the notice required in subsection (1) of section 46-714. Any interested person may appear at the hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach.

(c) Within thirty days after the final hearing under subdivision (b) of this subsection, 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.

(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; Laws 2009, LB54, § 1; Laws 2009, LB483, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB54, section 1, with LB483, section 3, to reflect all amendments.

Note: Changes made by LB483 became effective April 7, 2009. Changes made by LB54 became effective August 30, 2009.

46-714 River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; 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 (4) 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), (8), or (9) 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 (11) 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) 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.

(7) Within forty-five days after a natural resources district's final hearing pursuant to subsection (6) 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.

(8) 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.

(9) Beginning ten days after the first publication of notice under subsection (8) 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.

(10) 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.

(11) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (7), or (10) 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.

(12)(a) For purposes of this subsection, (i) a status change occurs when a preliminary or final determination that a river basin, subbasin, or reach is fully appropriated is reversed by the department or by judicial determination and such river basin, subbasin, or reach is determined not to be fully appropriated and (ii) the hydrologically connected area means the geographic area within which the department considers surface water and ground water in such river basin, subbasin, or reach to be hydrologically connected.

(b) If a status change occurs, any stays previously in force by the department or affected natural resources districts shall remain in force until the stays imposed under this subsection are in place and the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in the river basin, subbasin, or reach. The department shall also provide prompt notice of the status change in accordance with subsection (1) of this section. Immediately upon receipt of the notice by the affected natural resources district, there shall be stays imposed as set forth in subsections (1) and (2) of this section, subject to the exceptions set forth in subsection (3) of this section. The stays imposed pursuant to this subsection shall remain in effect within each affected natural resources district until such district adopts rules and regulations in accordance with subdivision (c), (d), or (e) of this subsection.

(c) Upon receipt of notice of a status change, each affected natural resources district shall adopt rules and regulations within one hundred twenty days after receipt of such notice for the prioritization and granting of water well permits within the hydrologically connected area for the four-year period following the status change. Nothing in this subsection shall be construed to supersede the authority provided to natural resources districts under subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m) of section 46-739.

(d) The rules and regulations adopted by each affected natural resources district in accordance with subdivision (c) of this subsection shall (i) allow a limited number of total new ground water irrigated acres annually, (ii) be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination, (iii) be for a term of not less than four years, and (iv) limit the number of new permits so that total new ground water irrigated acres do not exceed the number set in the rules and regulations. The department shall approve the proposed new number of ground water irrigated acres within sixty days after approval by the natural resources district if such district meets the conditions set forth in subdivision (d)(ii) of this subsection, based on the most recent basin determination.

(e) If the proposed new number of acres is not approved by the department within the applicable time period as provided in subdivision (d) of this subsection, the affected natural resources districts shall adopt rules and regulations that allow water well permits to be issued that will result in no more than two thousand five hundred irrigated acres or that will result in an increase of not more than twenty percent of all historically irrigated acres within the hydrologically connected area of each natural resources district within the affected river basin, subbasin, or reach, whichever is less, for each calendar year of the four-year period following the date of the determination described in this subsection. Each affected natural resources district may, after the initial four-year period has expired, annually determine whether water well permit limitations should continue and may enforce such limitations.

(f) During the four-year period following the status change, the department shall ensure that any new appropriation granted will not cause the basin, subbasin, or reach to be fully appropriated based on the most recent basin determination. The department, pursuant to its rules and regulations, shall not issue new natural flow surface water appropriations for irrigation, within the river basin, subbasin, or reach affected by the status change, that will result in a net increase of more than eight hundred thirty-four irrigated acres in each natural resources district during each calendar year of the four-year period following the date of the determination described in this subsection.

Source: Laws 2004, LB 962, § 54; Laws 2006, LB 1226, § 24; Laws 2009, LB54, § 2; Laws 2009, LB483, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB54, section 2, with LB483, section 4, to reflect all amendments.

Note: Changes made by LB483 became effective April 7, 2009. Changes made by LB54 became effective August 30, 2009.

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) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach designated as fully appropriated or overappropriated, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivi-

sions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) 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.

(5)(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 (4) 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 (4) 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 integrat-

ed 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 (5) 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 (5) 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 (5)(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 (5)(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 consul-

tative 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 (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) 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 (4)(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; Laws 2009, LB54, § 3.
Effective date August 30, 2009.

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 (4) 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; Laws 2009, LB54, § 4.
Effective date August 30, 2009.

Cross References

Open Meetings Act, see section 84-1407.

46-720 Proceedings under prior law; transitional provisions.

(1) The Legislature finds that, prior to July 16, 2004, actions were taken by the Department of Natural Resources and by one or more natural resources districts pursuant to section 46-656.28, as such section existed immediately prior to such date, for the purpose of addressing circumstances that are, after such date, to be addressed in accordance with sections 46-713 to 46-719. It is the intent of the Legislature that actions taken pursuant to section 46-656.28, as such section existed immediately prior to July 16, 2004, should not be negated and that transition from the authorities and responsibilities granted by such section to those granted by sections 46-713 to 46-719 should occur in as efficient a manner as possible. Such transition shall be therefor governed by subsections (2) through (5) of this section, and all references in such subsections to section 46-656.28 shall be construed to mean section 46-656.28 as such section existed immediately prior to July 16, 2004.

(2) If, prior to July 16, 2004, (a) a natural resources district requested pursuant to subsection (1) of section 46-656.28 that affected appropriators, affected surface water project sponsors, and the department consult and that studies and a hearing be held but (b) the Director of Natural Resources has not made a preliminary determination relative to that request pursuant to subsection (2) of section 46-656.28, no further action on the district's request shall be required of the department. If under the same circumstances a temporary suspension in the drilling of certain water wells has been imposed by the district pursuant to subsection (16) of section 46-656.28 and remains in effect immediately prior to July 16, 2004, such temporary suspension shall remain in effect for thirty days after the department issues its first annual report under section 46-713, except that (i) such temporary suspension shall not apply to water wells for which a permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and (ii) to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a river basin, subbasin, or reach designated as overappropriated by the department, such temporary suspension shall remain in effect only until it is superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the department to have ground water hydrologically connected to the surface water of a fully appropriated river basin, subbasin, or reach, such temporary suspension shall be superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(3)(a) If prior to July 16, 2004, (i) the director has made a preliminary determination pursuant to subsection (2) of section 46-656.28 that there is reason to believe that the use of hydrologically connected ground water and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any conflict, dispute, or difficulty listed in such subsection, (ii) the director has not made a determination pursuant to subsection (4) of section 46-656.28 that a joint action plan should not be prepared, and (iii) preparation of a joint action plan pursuant to subsections (5) through (9) of such section has not been completed, the geographic area involved shall become subject to sections 46-713 to 46-719 on

July 16, 2004, and the department need not evaluate such geographic area in its first annual report issued pursuant to section 46-713.

(b) For purposes of this subsection and section 46-714 and except as otherwise provided in this section, (i) July 16, 2004, shall result in the imposition in any geographic area subject to this subsection of the stays required by subsections (1) and (2) of section 46-714, (ii) such stays shall be imposed in the manner required by such section, and (iii) July 16, 2004, shall be treated as if it were the date of a departmental preliminary determination pursuant to section 46-713 that such area is a geographic area within which ground water and surface water of a fully appropriated river basin, subbasin, or reach are hydrologically connected. Notwithstanding the other provisions of this subsection, if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area and (B) the stays on construction of certain new water wells shall not apply to a water well constructed in accordance with the terms of a water well construction permit approved by the district prior to July 16, 2004, unless such well was subject to the district's temporary suspension. If, prior to July 16, 2004, the director has held a hearing on a report issued pursuant to subsection (3) of section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no departmental hearing shall be required pursuant to subsection (4) of section 46-714 before a final determination is made about whether the river basin, subbasin, or reach involved is fully appropriated. If, prior to July 16, 2004, the director has determined pursuant to subsection (4) of section 46-656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 46-714 that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required. If, after July 16, 2004, the department determines that all or part of the area subject to this subsection is in an overappropriated river basin, subbasin, or reach, that portion of the area shall thereafter be subject to the provisions of the Nebraska Ground Water Management and Protection Act applicable to an overappropriated river basin, subbasin, or reach and stays that have previously taken effect in accordance with this subsection shall continue in effect as stays for an overappropriated river basin, subbasin, or reach without additional action or publication of notice by the department. Any temporary suspension in the drilling of certain water wells that has been imposed in the geographic area involved by a natural resources district pursuant to subsection (16) of section 46-656.28 prior to July 16, 2004, shall remain in effect until superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(4) If, prior to July 16, 2004, preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of section 46-656.28 but the plan has not yet been adopted pursuant to subsection (11) of such section, the department need not evaluate the affected geographic area in its first annual report issued pursuant to section 46-713. The department and the affected natural resources district shall review the completed joint action plan for its

compliance with sections 46-715 to 46-717. If the joint action plan is determined to be in compliance with sections 46-715 to 46-717 or if agreement is reached on the revisions necessary to bring it into such compliance, the department and the district shall adopt the plan and implement the controls as provided in section 46-718. If the joint action plan is determined not to be in compliance with sections 46-715 to 46-717 and agreement on the proposed plan or the proposed controls cannot be reached pursuant to section 46-718, section 46-719 shall apply. Except to the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of certain water wells imposed in the affected geographic area by a natural resources district pursuant to subsection (16) of section 46-656.28 shall remain in effect until (a) the department and the affected district have jointly decided to implement the plan, with or without modifications, and controls have been adopted and taken effect or (b) the Interrelated Water Review Board, pursuant to section 46-719, has adopted an integrated management plan for the affected river basin, subbasin, or reach and the controls adopted by the board have taken effect. To the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of water wells shall be superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714.

(5) If, before July 16, 2004, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of section 46-656.28 and is in effect immediately prior to such date, the department need not evaluate the geographic area subject to the plan in the department's first annual report issued pursuant to section 46-713. For purposes of the Nebraska Ground Water Management and Protection Act, (a) the plan adopted shall be considered an integrated management plan adopted pursuant to section 46-718, (b) the management area designated shall be considered an integrated management area or subarea designated pursuant to section 46-718, and (c) the controls adopted shall be considered controls adopted pursuant to section 46-718 and shall remain in effect until amended or repealed pursuant to section 46-718 or 46-719.

Source: Laws 2004, LB 962, § 60; Laws 2009, LB483, § 5.
Effective date April 7, 2009.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

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, (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, (iii) transfers of certified water uses or certified irrigated acres between landowners or other persons, or (iv) transfers of certified water uses or certified irrigated acres between parcels or tracts under the control of a common landowner or other person. 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. Approval of any transfer of certified water uses or certified irrigated acres under subdivision (1)(k)(iii) or (iv) of this section shall further be subject to the district having complied with the requirements of section 46-739.01;

(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 and shall further condition participation upon satisfaction of the requirements of section 46-739.01.

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; Laws 2009, LB477, § 6.
Effective date August 30, 2009.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-739.01 District; approval of certain transfers or program participation; report of title required; form; written consent of lienholder; rights of lienholder.

(1) Notwithstanding any other provision of law, no district shall approve a transfer of certified water uses or certified irrigated acres or allow a ground water user or landowner to participate in a financial or other incentive program established pursuant to subsection (8) of section 46-739 unless the

person seeking such transfer or participation in such program has submitted to the district a report of title issued by an attorney or a registered abstracter, on a form prescribed by the district, reflecting (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and (b) the existence of all liens, evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and the name and address of each such lienholder, if any. If the report of title reflects the existence of any lien evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, written consent to such transfer or participation in such program shall be obtained from each such lienholder. The district may assess a fee against the person seeking such transfer or participation in such program to recoup its costs in reviewing the report of title.

(2) Approval of a transfer of certified water uses or certified irrigated acres or authorization of a ground water user or landowner to participate in such financial or other incentive program by a district shall not affect the rights of any lienholder who is not reflected in the report of title and from whom the required consent was not obtained. Such a lienholder may bring an action against the person seeking such transfer or participation in such program for damages or injunctive or other relief for any injury done to the lienholder's interest in land or use of ground water resulting from such transfer or participation.

(3) This section does not limit the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 2009, LB477, § 7.
Effective date August 30, 2009.

46-739.02 Transfer of right to use ground water; recording; recovery of cost; manner.

An instrument of transfer of the right to use ground water shall be recorded by a natural resources district with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a transfer of certified water uses or certified irrigated acres occurred, in any case in which a transfer of certified water uses or certified irrigated acres has been approved by such district. The instrument of transfer of the right to use ground water shall include a description of the real estate to and from which the certified water uses or certified irrigated acres were transferred, the nature of the transfer, and the date on which the transfer occurred. The district may recover the cost of filing an instrument of transfer of the right to use ground water from the person seeking the transfer. The instrument of transfer of the right to use ground water shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

Source: Laws 2009, LB477, § 8.
Effective date August 30, 2009.

46-739.03 Natural resources district determination; effect.

The determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established under section 46-740.

Source: Laws 2009, LB477, § 9.
Effective date August 30, 2009.

ARTICLE 16

SAFETY OF DAMS AND RESERVOIRS ACT

Section
46-1654. Application approval; issuance; public hearing; notice to department; when.

46-1654 Application approval; issuance; public hearing; notice to department; when.

(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. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(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; Laws 2009, LB209, § 2.
Effective date August 30, 2009.

CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.
1. County Jails. 47-119 to 47-121.01.
6. Community Corrections. 47-632.

ARTICLE 1
COUNTY JAILS

Section
47-119. Repealed. Laws 2009, LB 218, § 14.
47-119.01. Repealed. Laws 2009, LB 218, § 14.
47-120. Care of prisoners; county board or county board of corrections; sheriff; duties; payment.
47-121. Repealed. Laws 2009, LB 218, § 14.
47-121.01. Repealed. Laws 2009, LB 218, § 14.

47-119 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-119.01 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-120 Care of prisoners; county board or county board of corrections; sheriff; duties; payment.

The county board or county board of corrections serving pursuant to Chapter 23, article 28, shall provide proper quarters and adequate equipment for the preparation and serving of all meals furnished to all prisoners confined in the county jail. The county sheriff or the county board of corrections shall have full charge and control of such services and the county board shall provide for all washing, fuel, lights, and clothing for prisoners, subject to the right of the county to be paid by the city or federal government for city or federal prisoners at actual cost to the county. Supplies of every nature entering into the furnishing of meals, washing, fuel, lights, and clothing to the prisoners confined in the county jail shall be purchased and provided under the direction of the county sheriff or the county board of corrections. Payment for all purchases shall only be made by the county board on the original invoices submitted by the sheriff or the county board of corrections of goods, supplies, and services, setting forth (1) that the invoice correctly describes the goods as to quality and quantity, (2) that the same have been received and are in the custody of the affiant, (3) that they have been or will be devoted exclusively to the purposes authorized in this section, and (4) that the price charged is reasonable and just. Nothing in this section shall be construed to restrict the sheriff or the county board of corrections in employing necessary personnel and from otherwise carrying out the duties required in the operation of the jail.

Source: Laws 1980, LB 628, § 5; Laws 1984, LB 394, § 20; Laws 1989, LB 4, § 6; Laws 1998, LB 695, § 3; Laws 2009, LB218, § 2. Operative date July 1, 2011.

47-121 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

47-121.01 Repealed. Laws 2009, LB 218, § 14.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

ARTICLE 6
COMMUNITY CORRECTIONS

Section
47-632. Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.

(1) The Community Corrections Uniform Data Analysis Cash Fund is created. Except as provided in subsection (2) of this section, the fund shall be established for administrative purposes only within the Nebraska Commission on Law Enforcement and Criminal Justice, shall be administered by the executive director of the Community Corrections Council, and 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. The fund shall consist of money collected pursuant to section 47-633.

(2) On May 28, 2009, the State Treasurer shall transfer three hundred fifty thousand dollars from the Community Corrections Uniform Data Analysis Cash Fund to the Violence Prevention Cash Fund.

(3) Any money in the Community Corrections Uniform Data Analysis Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6; Laws 2009, LB63, § 31. Effective date May 28, 2009.

Cross References

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

CHAPTER 48
LABOR

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ARTICLE 1

WORKERS' COMPENSATION

PART I—COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

Section
48-106. Employer; coverage of act; excepted occupations; election to provide compensation.

PART II—ELECTIVE COMPENSATION

(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.
48-120.04. Diagnostic Related Group inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.
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(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-136. Compensation; voluntary settlements.
48-138. Compensation; lump-sum settlement; computation; fee.
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PART IV—NEBRASKA WORKERS' COMPENSATION COURT

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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 or at any time more than thirty calendar days prior to the time of injury 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; Laws 2009, LB630, § 1.
Effective date May 27, 2009.

PART II—ELECTIVE COMPENSATION

(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 instruments, and eyeglasses, but, in the case of dental appliances, hearing instruments, 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; Laws 2009, LB195, § 51.
Effective date August 30, 2009.

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, 2011. Claims for inpatient trauma services prior to January 1, 2011, shall be reim-

bursed 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; Laws 2009, LB630, § 2.
Effective date May 27, 2009.

48-125 Compensation; method of payment; delay; review of award; attorney's fees; interest.

(1)(a) 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. 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.

(b) 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.

(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; Laws 2009, LB630, § 3.
Effective date May 27, 2009.

(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. 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; Laws 2009, LB630, § 4.
Effective date May 27, 2009.

48-138 Compensation; lump-sum settlement; computation; fee.

The amounts of compensation payable periodically under the law by agreement of the parties with the approval of the Nebraska Workers' Compensation Court may be commuted to one or more lump-sum payments, except compensation due for death, permanent disability, or claimed permanent disability which may be commuted only as provided in section 48-139. If commutation is agreed upon pursuant to this section or section 48-139, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five percent per annum with annual rests.

The fee of the clerk of the compensation court for filing, docketing, and indexing an agreement submitted for approval as provided in this section shall

be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Source: Laws 1913, c. 198, § 40, p. 596; R.S.1913, § 3681; Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p. 199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-138; Laws 1975, LB 187, § 3; Laws 1986, LB 811, § 56; Laws 1993, LB 757, § 9; Laws 2009, LB630, § 5.
Effective date May 27, 2009.

48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; discharge of employer liability; filing of release; form; contents; fees.

(1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability under the Nebraska Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same. If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer (i) shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties, and (ii) shall be entitled to a duly executed release. Upon filing the release, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. Such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the Compensation Court Cash Fund.

Source: Laws 1917, c. 85, § 16, p. 212; Laws 1921, c. 122, § 1, p. 526; C.S.1922, § 3063; C.S.1929, § 48-140; Laws 1935, c. 57, § 25, p.

199; C.S.Supp.,1941, § 48-140; R.S.1943, § 48-139; Laws 1951, c. 153, § 1, p. 623; Laws 1975, LB 187, § 4; Laws 1977, LB 126, § 3; Laws 1978, LB 649, § 3; Laws 1986, LB 811, § 57; Laws 1993, LB 757, § 10; Laws 2002, LB 417, § 3; Laws 2009, LB630, § 6.
Effective date May 27, 2009.

48-140 Compensation; lump-sum settlements; conclusiveness; exception.

Any lump-sum settlement by agreement of the parties pursuant to section 48-139 shall be final and not subject to readjustment if the settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud. All awards of compensation made by the compensation court, except those amounts payable periodically, shall be final and not subject to readjustment.

Source: Laws 1913, c. 198, § 41, p. 597; R.S.1913, § 3682; Laws 1917, c. 85, § 17, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3064; C.S.1929, § 48-141; Laws 1935, c. 57, § 26, p. 200; C.S.Supp.,1941, § 48-141; R.S.1943, § 48-140; Laws 1975, LB 187, § 5; Laws 1986, LB 811, § 58; Laws 1989, LB 410, § 1; Laws 1993, LB 757, § 11; Laws 2009, LB630, § 7.
Effective date May 27, 2009.

48-141 Lump-sum settlement; finality; periodic payment; modification.

All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump-sum payments pursuant to section 48-139 shall be final and not subject to readjustment if the lump-sum settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

Source: Laws 1913, c. 198, § 42, p. 597; R.S.1913, § 3683; Laws 1917, c. 85, § 18, p. 213; Laws 1921, c. 122, § 1, p. 527; C.S.1922, § 3065; Laws 1929, c. 81, § 2, p. 274; C.S.1929, § 48-142; Laws 1935, c. 57, § 27, p. 201; C.S.Supp.,1941, § 48-142; R.S.1943, § 48-141; Laws 1975, LB 187, § 6; Laws 1986, LB 811, § 59; Laws 1989, LB 410, § 2; Laws 1993, LB 757, § 12; Laws 2009, LB630, § 8.
Effective date May 27, 2009.

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 and acceptance 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; Laws 2009, LB630, § 9.
Effective date May 27, 2009.

PART IV—NEBRASKA WORKERS' COMPENSATION COURT

48-168 Compensation court; rules of evidence; procedure; informal dispute resolution; 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, by a vocational rehabilitation counselor certified pursuant to section 48-162.01, 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. If informal dispute resolution is ordered by the compensation court on its own motion, the compensation court may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. No settlement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement is in conformity with the Nebraska Workers' Compensation Act. Any such settlement shall be voluntarily entered into by the parties.

(b)(i) Except as permitted in subdivision (b)(ii) of this subsection, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a judge of the compensation court that may make a ruling on the dispute that is the subject of the mediation.

(ii) A mediator may disclose:

(A) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; and

(B) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(iii) A communication made in violation of subdivision (b)(i) of this subsection shall not be considered by a judge of the compensation court.

(c) Informal dispute resolution proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution 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 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 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 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 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, § 48-168; Laws 1986, LB 811, § 101; Laws 1993, LB 757, § 25; Laws 2006, LB 489, § 34; Laws 2009, LB630, § 10.
Effective date May 27, 2009.

ARTICLE 6
EMPLOYMENT SECURITY

Section
48-610. Repealed. Laws 2009, LB 631, § 15.
48-612.01. Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.
48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.
48-622.02. Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use.
48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.
48-647. Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.
48-648. Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.
48-648.01. Employer; submit quarterly wage reports; when.
48-649. Combined tax rate; how computed.
48-652. Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.
48-654. Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.
48-655. Combined taxes; payments in lieu of contributions; collections; setoffs; interest; actions; offset against federal income tax refund; procedure.
48-665. Benefits; erroneous payments; recovery; offset against federal income tax refund; procedure.
48-668. Unemployment compensation; services performed in another state; arrangements with other states.
48-668.02. Unemployment compensation; services performed in another state; reimbursements to and from other states.

48-610 Repealed. Laws 2009, LB 631, § 15.

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) 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 the claim or appeal;

(b) The names, addresses, and identification numbers of employers may be disclosed to the Nebraska Workers' Compensation Court which may use such information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeal tribunal decisions rendered pursuant to the Employment Security Law and designated as precedential decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in printed or electronic format 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) For use in reports and publications containing 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) To an individual or employer if the information requested pertains only to the individual or employer making the request;

(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) 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; Laws 2009, LB631, § 1.
Effective date May 27, 2009.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-622.01 State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.

(1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for the sole and exclusive use of payment of unemployment insurance benefits. 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, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

Source: Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2.
Effective date May 27, 2009.

Cross References

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

48-622.02 Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use.

(1) There is hereby created in the state treasury a special fund to be known as the Nebraska Training and Support Trust 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. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers, (d) recruitment of workers to Nebraska, (e) training new employees of expanding Nebraska businesses, (f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and (g) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) through (g) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund

and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

Source: Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3.
Effective date May 27, 2009.

Cross References

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

48-622.03 Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.

(1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

(a) A representative of employers in Nebraska;

(b) A representative of employees in Nebraska;

(c) A representative of the public;

(d) The Commissioner of Labor or a designee;

(e) The Director of Economic Development or a designee;

(f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, and annually thereafter the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Source: Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4.
Effective date May 27, 2009.

48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program 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 7 U.S.C. 2022(c)(1) as such section existed on January 1, 2009, of Supplemental Nutrition Assistance Program benefits, if not otherwise known or disclosed to the state Supplemental Nutrition Assistance Program agency. The commissioner shall notify the state Supplemental Nutrition Assistance Program 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 Supplemental Nutrition Assistance Program agency under 7 U.S.C. 2022(c)(3)(A) as such section existed on January 1, 2009, or (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. 2022(c)(3)(B) as such section existed on January 1, 2009.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state Supplemental Nutrition Assistance Program 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 Supplemental Nutrition Assistance Program 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 Supplemental Nutrition Assistance Program agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state Supplemental Nutrition Assistance Program 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; Laws 2009, LB288, § 15.
Operative date August 30, 2009.

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. For all tax years beginning before January 1, 2010, 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. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the

two preceding calendar years has equaled or exceeded one 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; Laws 2009, LB631, § 5.
Effective date May 27, 2009.

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. For all tax years beginning before January 1, 2010, 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. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one 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; Laws 2009, LB631, § 6.
Effective date May 27, 2009.

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; or

(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;

(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) Wages for employment have been paid by the employer in 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 Industry 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 paid wages for employment during each of the two four-calendar-quarter periods ending on September 30 of any year, but has paid wages for employment 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
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;

(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; and

(iii) No employer with a positive experience account balance shall be assigned to category twenty.

(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. For all tax years beginning before January 1, 2010, 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. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one 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; Laws 2009, LB631, § 7.
Effective date May 27, 2009.

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.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

Source: Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp.,1941, § 48-707; R.S. 1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8.
Effective date May 27, 2009.

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 either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding 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 following September 30, 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 September 30 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 four calendar quarters ending September 30 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; Laws 2009, LB631, § 9.
Effective date May 27, 2009.

48-655 Combined taxes; payments in lieu of contributions; collections; set-offs; interest; actions; offset against federal income tax refund; procedure.

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of contributions, penalties, and interest due and payable for which the commissioner has determined the person to be liable due to fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor, by certified mail return receipt requested, that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Source: Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp.,1941, § 48-713; R.S.1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB631, § 10. Effective date May 27, 2009.

48-665 Benefits; erroneous payments; recovery; offset against federal income tax refund; procedure.

(1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled as a result of fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The

commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Source: Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11.
Effective date May 27, 2009.

48-668 Unemployment compensation; services performed in another state; arrangements with other states.

(1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which (i) any part of such individual's service is performed, (ii) such individual has his or her residence, or (iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

(b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

(c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the

Employment Security Law. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

(d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws and (b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(1), p. 432; Laws 1971, LB 651, § 13; Laws 1985, LB 339, § 49; Laws 2009, LB631, § 12. Effective date May 27, 2009.

48-668.02 Unemployment compensation; services performed in another state; reimbursements to and from other states.

Reimbursements paid from the fund pursuant to subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal

agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

Source: Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp.,1941, § 48-717; R.S.1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(3), p. 434; Laws 1985, LB 339, § 50; Laws 2009, LB631, § 13.
Effective date May 27, 2009.

ARTICLE 7
BOILER INSPECTION

Section
48-722. State boiler inspector; inspection; exception; contract with authorized inspection agency; certification.

48-722 State boiler inspector; inspection; exception; contract with authorized inspection agency; certification.

(1) Except as provided in subsections (3) and (4) 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.

(4) A boiler that is used as a water heater to supply potable hot water and that is not otherwise exempt from inspection under the act pursuant to section 48-726 shall be subject to inspection at least once every twenty-four months in accordance with a schedule of inspection established by the commissioner by rule and regulation.

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; Laws 2009, LB627, § 1.
Effective date August 30, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 13
EQUAL OPPORTUNITY FOR DISPLACED HOMEMAKERS

Section
48-1301. Repealed. Laws 2009, LB 549, § 53.
48-1302. Repealed. Laws 2009, LB 549, § 53.
48-1303. Repealed. Laws 2009, LB 549, § 53.
48-1304. Repealed. Laws 2009, LB 549, § 53.
48-1305. Repealed. Laws 2009, LB 549, § 53.
48-1306. Repealed. Laws 2009, LB 549, § 53.
48-1309. Repealed. Laws 2009, LB 549, § 53.

48-1301 Repealed. Laws 2009, LB 549, § 53.

48-1302 Repealed. Laws 2009, LB 549, § 53.

48-1303 Repealed. Laws 2009, LB 549, § 53.

48-1304 Repealed. Laws 2009, LB 549, § 53.

48-1305 Repealed. Laws 2009, LB 549, § 53.

48-1306 Repealed. Laws 2009, LB 549, § 53.

48-1309 Repealed. Laws 2009, LB 549, § 53.

ARTICLE 21
CONTRACTOR REGISTRATION

Section
48-2101. Act, how cited.
48-2103. Terms, defined.
48-2104. Registration required.
48-2105. Registration; application; contents; renewal.

Section
48-2107. Fees; exemption.
48-2115. Contractor Registration Cash Fund; created; use; investment.
48-2117. Data base of contractors; removal.

48-2101 Act, how cited.

Sections 48-2101 to 48-2117 shall be known and may be cited as the Contractor Registration Act.

Source: Laws 1994, LB 248, § 1; Laws 2009, LB162, § 1.
Operative date January 1, 2010.

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;

(3) Contractor means an individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person;

(4) Department means the Department of Labor;

(5) Nonresident contractor means a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state; and

(6) 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; Laws 2009, LB162, § 2.
Operative date January 1, 2010.

48-2104 Registration required.

(1) 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. Any person who performs work or has work performed on his or her own property or any person who

earns less than five thousand dollars annually for construction services is not a contractor for purposes of the Contractor Registration Act.

(2) An exemption from the requirements under subsection (1) of this section does not exempt a contractor from withholding requirements under the Nebraska Revenue Act of 1967.

Source: Laws 1994, LB 248, § 4; Laws 2008, LB204, § 3; Laws 2009, LB162, § 3.
Operative date January 1, 2010.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

48-2105 Registration; application; contents; renewal.

Each contractor shall apply to the department for a registration number on an application form provided by the department. The application shall contain the following information:

(1) The name and federal employer identification number or, if the applicant is an individual, the social security number of the contractor;

(2) The principal place of business of the contractor in Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Nebraska;

(3) The telephone number of the contractor in the State of Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Nebraska;

(4) The type of business entity of the contractor such as corporation, partnership, limited liability company, sole proprietorship, or trust;

(5) The contractor option election to collect and remit sales and use tax on purchases of building materials and fixtures annexed to real property;

(6) The following information about the business entity:

(a) If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation; and

(b) If the contractor is other than a corporation, the name, address, and telephone number of each owner;

(7) Proof of (a) a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of workers' compensation insurance coverage indicating that it is in force, (b) a certificate evidencing approval of self-insurance privileges as provided by the Nebraska Workers' Compensation Court pursuant to section 48-145, or (c) a signed statement indicating that the contractor is not required to carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act; and

(8) A description of the business which includes the employer's standard industrial classification code or the principal products and services provided.

Each application shall be renewed annually upon payment of the fee prescribed in section 48-2107.

Source: Laws 1994, LB 248, § 5; Laws 1997, LB 752, § 129; Laws 2009, LB162, § 4.
Operative date January 1, 2010.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

48-2107 Fees; exemption.

(1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee of forty dollars. The commissioner may adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures. The commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

Source: Laws 1994, LB 248, § 7; Laws 2008, LB204, § 4; Laws 2009, LB162, § 5.
Operative date January 1, 2010.

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 that are to be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 248, § 13; Laws 1995, LB 7, § 52; Laws 2008, LB204, § 6; Laws 2009, LB162, § 7.
Operative date January 1, 2010.

Cross References

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

48-2117 Data base of contractors; removal.

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967. The data base shall be accessible on the web site of the Department of Labor.

(2) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

Source: Laws 2009, LB162, § 6.
Operative date January 1, 2010.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 23
NEW HIRE REPORTING ACT

Section
48-2302. Terms, defined.

48-2302 Terms, defined.

For purposes of the New Hire Reporting Act:

(1) Date of hire means the day an employee begins employment with an employer;

(2) Department means the Department of Health and Human Services;

(3) Employee means an independent contractor or a person who is compensated by or receives income from an employer or other payor, regardless of how such income is denominated;

(4) Employer means any individual, partnership, limited liability company, firm, corporation, association, political subdivision, or department or agency of the state or federal government, labor organization, or any other entity with an employee;

(5) Income means compensation paid, payable, due, or to be due for labor or personal services, whether denominated as wages, salary, earnings, income, commission, bonus, or otherwise;

(6) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government; and

(7) Rehire means the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as an unpaid medical leave, an unpaid leave of absence, a temporary layoff, or an absence for disability or maternity.

Source: Laws 1997, LB 752, § 41; Laws 2009, LB288, § 16.
Operative date January 1, 2010.

ARTICLE 26
NEBRASKA UNIFORM ATHLETE AGENTS ACT

Section
48-2601. Act, how cited.
48-2602. Terms, defined.
48-2603. Service of process; subpoenas.
48-2604. Athlete agent; registration required; void contracts.
48-2605. Registration as athlete agent; form; requirements.
48-2606. Certificate of registration; issuance or denial; renewal.
48-2607. Suspension, revocation, or refusal to renew registration.
48-2608. Temporary registration.
48-2609. Registration and renewal fees.
48-2610. Required form of contract.
48-2611. Notice to educational institution.
48-2612. Student-athlete's right to cancel.
48-2613. Required records.
48-2614. Prohibited conduct.
48-2615. Criminal penalty.
48-2616. Civil remedies.
48-2617. Administrative penalty.
48-2618. Uniformity of application and construction.
48-2619. Electronic Signatures in Global and National Commerce Act.

48-2601 Act, how cited.

Sections 48-2601 to 48-2619 shall be known and may be cited as the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 1.
Operative date January 1, 2010.

48-2602 Terms, defined.

In the Nebraska Uniform Athlete Agents Act:

(1) Agency contract means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;

(2) Athlete agent means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(3) Athletic director means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) Contact means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) Endorsement contract means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any

value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(6) Intercollegiate sport means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(8) Professional-sports-services contract means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(9) 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;

(10) Registration means registration as an athlete agent pursuant to the act;

(11) 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; and

(12) Student-athlete means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Source: Laws 2009, LB292, § 2.
Operative date January 1, 2010.

48-2603 Service of process; subpoenas.

(1) By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(2) The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 3.
Operative date January 1, 2010.

48-2604 Athlete agent; registration required; void contracts.

(1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 48-2606 or 48-2608.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

Source: Laws 2009, LB292, § 4.
Operative date January 1, 2010.

48-2605 Registration as athlete agent; form; requirements.

(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(a) The name of the applicant and the address of the applicant's principal place of business;

(b) The name of the applicant's business or employer, if applicable;

(c) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(d) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent;

(e) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

(h) Whether the applicant or any person named pursuant to subdivision (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(j) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or an educational institution;

(k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (g) of this subsection arising out of occupational or professional conduct; and

(l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (g) of this subsection as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

Source: Laws 2009, LB292, § 5.
Operative date January 1, 2010.

48-2606 Certificate of registration; issuance or denial; renewal.

(1) Except as otherwise provided in subsection (2) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection (1) of section 48-2605 or whose application has been accepted under subsection (2) of section 48-2605.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) Engaged in conduct prohibited by section 48-2614;

(e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or an educational institution; or

(g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2) of this section, the Secretary of State shall consider:

(a) How recently the conduct occurred;

(b) The nature of the conduct and the context in which it occurred; and

(c) Any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for two years.

Source: Laws 2009, LB292, § 6.
Operative date January 1, 2010.

48-2607 Suspension, revocation, or refusal to renew registration.

(1) The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection (2) of section 48-2606.

(2) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 7.
Operative date January 1, 2010.

48-2608 Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Source: Laws 2009, LB292, § 8.
Operative date January 1, 2010.

48-2609 Registration and renewal fees.

(1) An application for registration or renewal of registration must be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nebraska Uniform Athlete Agents Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Administration Cash Fund.

Source: Laws 2009, LB292, § 9.
Operative date January 1, 2010.

48-2610 Required form of contract.

(1) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Source: Laws 2009, LB292, § 10.
Operative date January 1, 2010.

48-2611 Notice to educational institution.

(1) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

Source: Laws 2009, LB292, § 11.
Operative date January 1, 2010.

48-2612 Student-athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Source: Laws 2009, LB292, § 12.
Operative date January 1, 2010.

48-2613 Required records.

(1) An athlete agent shall retain the following records for a period of five years:

(a) The name and address of each individual represented by the athlete agent;

(b) Any agency contract entered into by the athlete agent; and

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required by subsection (1) of this section to be retained are open to inspection by the Secretary of State during normal business hours.

Source: Laws 2009, LB292, § 13.
Operative date January 1, 2010.

48-2614 Prohibited conduct.

(1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) Give any materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) Initiate contact with a student-athlete unless registered under the Nebraska Uniform Athlete Agents Act;

(b) Refuse or fail to retain or permit inspection of the records required to be retained by section 48-2613;

(c) Fail to register when required by section 48-2604;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Source: Laws 2009, LB292, § 14.
Operative date January 1, 2010.

48-2615 Criminal penalty.

An athlete agent who violates section 48-2614 is guilty of a Class I misdemeanor.

Source: Laws 2009, LB292, § 15.
Operative date January 1, 2010.

48-2616 Civil remedies.

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of the Nebraska Uniform Athlete Agents Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or a former student-athlete, the educational institution was injured by a violation of the act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) The act does not restrict rights, remedies, or defenses of any person under law or equity.

Source: Laws 2009, LB292, § 16.
Operative date January 1, 2010.

48-2617 Administrative penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of the Nebraska Uniform Athlete Agents Act.

Source: Laws 2009, LB292, § 17.
Operative date January 1, 2010.

48-2618 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 2009, LB292, § 18.
Operative date January 1, 2010.

48-2619 Electronic Signatures in Global and National Commerce Act.

The provisions of the Nebraska Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464 (2000), as such act existed on January 1, 2009, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2009, LB292, § 19.
Operative date January 1, 2010.