

## LEGISLATIVE BILL 253

Approved by the Governor April 24, 1985

Introduced by Public Health & Welfare Committee,  
Wesely, 26, Chairperson; Smith, 33;  
Peterson, 21; Chronister, 18

AN ACT relating to health care facilities; to amend sections 44-772, 44-3602, 71-2017.01, 71-2017.03, and 71-2018, Reissue Revised Statutes of Nebraska, 1943, and sections 71-2017, 71-2020, 77-2704, and 81-502, Revised Statutes Supplement, 1984; to restate intent; to provide for a waiver; to define terms; to change definitions relating to certain health care facilities; to change certain fees as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 44-772, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-772. Alcoholic treatment center shall mean an institution licensed as an alcoholic treatment center by the Department of Health and described in ~~subdivision (12)~~ of section 71-2017.01, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Sec. 2. That section 44-3602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3602. As used in sections 44-3601 to 44-3611, unless the context otherwise requires:

(1) Policy shall mean the entire contract between the insurer and the insured, including the policy riders, endorsements, and the application, if attached, and also includes subscriber contracts issued by nonprofit hospital and medical service associations and by health maintenance organizations;

(2) Certificate shall mean any certificate issued under a group medicare supplement policy or group limited accident and sickness indemnity insurance policy, which policy has been delivered or issued for delivery in this state;

(3) Medicare shall mean the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted and later amended;

(4) Medicare supplement policy shall mean a

group or individual policy which is designed to supplement Medicare substantially or in part, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the requirements of sections 44-3601 to 44-3611 and of rules and regulations authorized by sections 44-3601 to 44-3611 applicable to any such policy or certificate sold to a person eligible for Medicare by reason of age, except that such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations;

(b) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation, has been maintained in good faith for purposes other than obtaining insurance, and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members; or

(c) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of sections 44-3601 to 44-3611;

(5) Format shall mean style, arrangements, and overall appearance including, but not limited to, such items as the size, color, and prominence of type, and the arrangement of text and captions;

(6) Director shall mean the Director of Insurance;

(7) Department shall mean the Department of Insurance;

(8) Medicare benefit period shall mean the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance;

(9) Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable under Medicare;

(10) Direct response insurance shall mean insurance issued to an applicant who has completed the application and forwarded it directly to the insurer in response to a solicitation coming into the applicant's possession by any means of mass communication, including the United States mail; and

(11) Limited indemnity policy shall mean any

group or individual accident and sickness policy, other than a Medicare supplement policy, which is issued to persons eligible for Medicare by reason of age and which is primarily designed to provide (a) hospital confinement indemnity coverage, (b) specified disease coverage, or (c) coverage for confinement in institutions or facilities skilled nursing facilities, all intermediate care facilities, residential care facilities, or domiciliary care facilities as defined in subdivision (5) (6) (7) (8) or (9) of section 71-2017.01.

Sec. 3. That section 71-2017, Revised Statutes Supplement, 1984, be amended to read as follows:

71-2017. The purpose of sections 71-2017 to 71-2029, 71-6008 to 71-6037, and 81-604.01 is to provide for the development, establishment, and enforcement of basic standards (1) for the care of persons in hospitals, maternity homes, health clinics, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, intermediate care facilities three, domiciliary facilities, mental health centers, centers for the developmentally disabled, alcoholic treatment centers, residential care facilities, and drug treatment centers or persons using the services of a home health agency, except that, PROVIDED, any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 and amendments thereof exclusively for its own members shall be exempt, except unless any such fraternal organization owning or operating such a hospital or other health care facility may be is issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with the provisions of sections 71-2017 to 71-2029 and 71-6008 to 71-6037, and (2) for the construction, maintenance, and operation of such health care facilities which, in the light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities.

The Department of Health may waive any rule, regulation, or standard adopted and promulgated by the department relating to licensed health services or facilities when in the opinion of the department the waiver of such rule, regulation, or standard will not unduly jeopardize the health or welfare of the patients or residents and the closing of the service or facility would create an undue hardship on the community in taking care of the needs of such persons. Any such waiver may be under such terms and conditions and for such period of time, not to exceed one year at a time, as the department may prescribe. The department may each year waive such rule, regulation, or standard for an additional year if the department determines that the continued waiver of such rule, regulation, or standard for an additional year will not constitute an imminent hazard to the health or welfare



of the patients or residents by continued operation of the service or facility and the closing of the service or facility would create an undue hardship on the community in taking care of the needs of such persons. No waiver shall be allowed if it would cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Nothing in sections 71-2017 to 71-2029, 71-2031 to 71-2040, 71-6008 to 71-6037, and 81-604.01, or in any rule or regulation adopted or promulgated pursuant thereto, shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards, and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section, nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or control in connection with the operation of any such facility.

Sec. 4. That section 71-2017.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017.01. As used in sections 71-2017 to 71-2029, unless the context otherwise requires:

(1) Care shall mean the exercise of concern or responsibility for the comfort and welfare of the residents of a facility by the owner, occupant, administrator, or operator of the facility in addition to the provision of food and shelter to the residents and shall include, but not be limited to, the maintenance of a minimum amount of supervision of the activities of the residents of the facility as well as the providing of a minimum amount of assistance to the residents, and shall also include personal care, hereby defined as the provision of health-related services for individuals who are in need of a protective environment but who are otherwise able to manage the normal activities of daily living;

(2) Hospital shall mean any institution, facility, place, or building which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or medical care over a period exceeding twenty-four consecutive hours of two or more unrelated individuals suffering from illness, condition, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four consecutive hours of obstetrical or other medical care for two or more unrelated individuals, or any institution, facility, place, or building in which any accommodation is

primarily maintained, furnished, or offered for the medical and nursing care over a period exceeding twenty-four consecutive hours of two or more nonrelated aged or infirm persons requiring or receiving convalescent care, and shall include, but not be restricted to, facilities or parts of facilities which provide space for general acute hospitals, osteopathic hospitals, convalescent hospitals, rehabilitation hospitals, long-term care hospitals, psychiatric or mental hospitals, tuberculosis hospitals, emergency hospitals or treatment centers, and infirmaries; and shall not be construed to include the residence, office, or clinic of a private physician or of an association of physicians, of any other health practitioner, or of any practitioner or association of practitioners licensed pursuant to the provisions of Chapter 71, in which residence, office, or clinic patients are not treated or given care for a period in excess of twenty-four consecutive hours;

(3) Maternity home shall mean any institution, facility, place, or building devoted to the care of maternity patients primarily or exclusively;

(4) Health clinic shall mean any institution, facility, place, building, or agency which is operated under the name or title of health clinic, health center, or any other word or phrase of like or similar import, either independently or in connection with any other purpose, for the purpose of providing or making available at such institution, facility, place, building, or agency on an outpatient basis and for a period not exceeding twenty-four consecutive hours advice, counseling, diagnosis, treatment, care, or services relating to the preservation or maintenance of health primarily or exclusively to persons not residing or confined in such institution, facility, place, or building; and which is not licensed as a hospital. Satellite clinics operated on an intermittent basis at a specific location or site and providing services within a portion of the total geographic area served by a licensed health clinic need not be licensed, but may operate as a part of the parent clinic and share administration and services. Specific types or categories of health clinics may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition; and in no case shall be construed to include the residence, office, or clinic of a private physician or of an association of physicians, of any other health practitioner or association of practitioners, or of any practitioner licensed pursuant to the provisions of Chapter 71 unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week in such residence, office, or clinic;

(5) Skilled nursing facility shall mean any institution or facility, or a distinct part of any

institution or facility, which is primarily devoted to providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. A skilled nursing facility shall provide at least one registered nurse on duty on the day shift seven days per week and a licensed registered nurse or licensed practical nurse on the other two shifts seven days per week. The Director of Nursing Services shall be a licensed registered nurse;

(6) Intermediate care facility one shall mean any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital care, but who, by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care. An intermediate care facility one shall provide at least one licensed registered nurse on duty on the day shift seven days per week and a licensed registered nurse or licensed practical nurse on the other two shifts seven days per week. The Director of Nursing Services shall be a licensed registered nurse;

(7) Intermediate care facility two shall mean any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital care, but who by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care. An intermediate care facility two shall provide at least one licensed registered nurse, licensed practical nurse, or care staff member on duty seven days per week twenty-four hours per day and a registered nurse or licensed practical nurse on duty at least on the day shift seven days a week. The Director of Nursing Services shall be a licensed registered nurse;

(8) ~~(7)~~ Intermediate care facility ~~three~~ two shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation, board, and nursing care; ~~but not nursing care~~; for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital ~~or nursing~~ care, but who, by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity need care and need assistance in taking their medication. An intermediate care facility three shall provide at least one care staff member on duty seven days per week



twenty-four hours per day and at least one licensed practical nurse on the day shift seven days per week. The Health Service Supervisor may be a licensed practical nurse;

(9) ~~(8)~~ Residential care facility shall mean any institution, facility, place, or building in which there is provided for a period exceeding twenty-four consecutive hours accommodation, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to four or more nonrelated individuals who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs, but do not require the daily services of a licensed registered or practical nurse;

(10) ~~(9)~~ Domiciliary facility shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation and supervision to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs, but who are in need of supervision, including supervision of nutrition, by the facility on a regular, continuing basis, but not necessarily on a consecutive twenty-four hour basis. This definition shall not include those homes or facilities providing casual care at irregular intervals;

(11) ~~(10)~~ Mental health center shall mean any institution, facility, place, or building which is used to provide, for a period exceeding twenty-four consecutive hours, accommodation, board, and advice, counseling, diagnosis, treatment, care, or services primarily or exclusively to persons residing or confined in the facility who are afflicted with a mental disease, disorder, or disability; and which is not licensed as a hospital;

(12) ~~(11)~~ Center for the developmentally disabled shall mean any residential facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis, treatment, care, including medical care when appropriate, or services primarily or exclusively to four or more persons residing in the facility who are developmentally disabled, which term shall include those persons suffering from mental retardation, cerebral palsy, epilepsy, or other neurological handicapping conditions which require care similar to the care required for persons suffering from such ~~aforementioned~~ conditions;

(13) ~~(12)~~ Alcoholic treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment,

services, maintenance, accommodation, or board; ~~or any of them;~~ in a group setting primarily or exclusively for individuals having any type of habituation, dependency, or addiction to the use of alcohol and provides in which there are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the alcohol dependent or alcoholic to move into independent living in normal surroundings, but ~~in which there are not provided these~~ services that can be rendered only by a physician or within the confines of a hospital, and ~~in which there is not provided~~ a permanent residence but only a temporary one, and shall include facilities in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the facility having any type of habituation, dependency, or addiction to the use of alcohol. Specific 7 and specific types or categories of alcoholic treatment centers may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition; and

(14) ~~(13)~~ Drug treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board; ~~or any of them;~~ in a group setting primarily or exclusively for individuals who have any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug and provides in which there are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the drug user, dependent, or addict to move into independent living in normal surroundings, but ~~in which there are not provided these~~ services that can be rendered only by a physician or within the confines of a hospital, and ~~in which there is not provided~~ a permanent residence but only a temporary one, and shall include facilities in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the facility having any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug. Specific 7 and specific types or categories of drug treatment centers may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition; and

(15) Home health agency shall mean a public agency, private organization, or subdivision of such an agency or organization which is primarily engaged in providing skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to patients in a place of temporary or permanent residence used as the patient's home under a plan of care as prescribed by the attending physician and which meets the regulations and



standards as established by the Department of Health. Parent home health agency shall mean the primary home health agency which establishes, maintains, and assures administrative and supervisory control of branch offices and subunits. Branch office shall mean a home health agency which is at a location or site providing services within a portion of the total geographic area served by the parent agency and is in sufficient proximity to share administration, supervision, and services with its parent agency in a manner that renders it unnecessary for the branch independently to meet licensure requirements. A branch office shall be part of its parent home health agency and share administration and services. Subunit shall mean a home health agency which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services on a daily basis and shall independently meet the licensing requirements for home health agencies. Home health agency shall not include private duty nursing registries as long as the individual is the direct payee from the patient. Home health agency shall not apply to the practice of home health care by other licensed medical persons as authorized by the practice of their particular specialty nor to the individuals providing homemaker or chore services within the home.

Sec. 5. That section 71-2017.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017.03. Whenever the terms home for the aged, home for the aged or infirm, or nursing home are mentioned in any statute, unless such statute specifically designates otherwise, they all shall be construed to refer exclusively to skilled nursing facilities and to intermediate care facilities one, ~~and two, and three.~~

Sec. 6. That section 71-2018, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2018. No institution or facility (1) which maintains and operates facilities for the care or supervision of two or more nonrelated persons suffering from illness, injury, infirmity, or deformity, or (2) where obstetrical or other care is rendered over a period exceeding twenty-four hours, or (3) where day care is provided as an organized program in mental health centers or for adults in intermediate care facilities ~~two three~~ or residential care facilities, or (4) which is mentioned in subdivision (1) of section 71-2017 shall be established, conducted, or maintained in the State of Nebraska without first obtaining a license therefor from the Department of Health in the manner provided in sections 71-2017 to 71-2029. Facilities licensed under Chapter 71, article 19, need not be licensed under Chapter 71, article 20.

Sec. 7. That section 71-2020, Revised Statutes Supplement, 1984, be amended to read as follows:

71-2020. Applicants for license shall file applications under oath with the Department of Health upon forms prescribed and shall pay a license fee of fifty dollars as a base fee, except that hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, and intermediate care facilities three shall pay a license fee of one hundred twenty-five dollars as a base fee. In addition to such ~~base fee and in addition thereto, for~~ hospitals, skilled nursing facilities, intermediate care facilities one, and intermediate care facilities two, and intermediate care facilities three shall pay a fee of five dollars for each bed available for patients of the facility, and for all other types of facilities shall pay a fee of one dollar for each bed available for patients thereof. Such fees ~~fee~~ shall be paid into the state treasury and by the State Treasurer credited to the General Fund, or if the license is denied that part of the fees paid for beds available shall be returned to the applicant. Applications shall be signed (1) by the owner, if an individual or partnership, (2) by two of its officers, if a corporation, or (3) by the head of the governmental department having jurisdiction over it, if a governmental unit. Applications shall set forth the full name and address of the institution for which license is sought, and of the owner in case of different address, the names of the persons in control thereof, and such additional information as the Department of Health may require, including affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as may be lawfully prescribed hereunder.

Sec. 8. That section 77-2704, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27,135 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property, the gross receipts from the sale, lease, or rental of which or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b)(i) Aircraft fuel as defined under the provisions of Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under the provisions of Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed, or exempted under the provisions of Chapter 66, article 4, and special fuels as defined, taxed, or exempted for use on the highways under the provisions of Chapter 66, article 6;

(c) Tangible personal property used for the

performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1)(g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, except that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, prosthetic devices, and oxygen sold under a doctor's prescription for aid in human respiration;

(g)(i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state, pursuant to the contract of sale, by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. This shall include the gross receipts from sales of tangible personal property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state



destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i) Purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any educational institution established under the provisions of Chapter 79, any private college or university, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, ~~ex~~ intermediate care facility one, intermediate care facility two, or intermediate care facility three licensed under sections 71-2017 to 71-2029 and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child caring agency, or any licensed child placement agency. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair. Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in this subdivision which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the tangible personal property physically incorporated into the construction, improvement, or repair. The Tax Commissioner shall allow a refund to the institution on any contract of construction, improvement, or repair entered into prior to July 1, 1980, whereby the person purchasing, storing, using, or otherwise consuming tangible personal property has paid the applicable sales and use tax thereon. The refund shall be calculated by multiplying the sales or use tax percentage rate times a sum equal to sixty per cent of the

total contract price of such construction, improvement, or repair;

(j) The gross receipts from the sale of tangible personal property when sold through coin-operated vending machines below a sum of fifteen cents;

(k) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane for use in processing, manufacturing, mining, refining, irrigation, farming, building construction, telegraph, telephone, and radio communication, and street and railroad transportation services and for all business, commercial, and industrial uses;

(l) The use of coin-operated machines used for laundering and cleaning;

(m) Purchases by the state, including educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, for use in a governmental capacity, or by any irrigation or reclamation district or the irrigation division of any public power and irrigation district. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair;

(n) The purchase price of a motor vehicle purchased with funds substantially contributed by the Veterans' Administration of the United States for a disabled veteran under the provisions of section 1901, Chapter 39, Title 38, United States Code;

(o) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month;

(p) Sales and purchases of semen for use in ranching, farming, commercial, or industrial uses;

(q) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by, associations or societies of Nebraska citizens qualified to receive financial support as provided under sections 2-2801 to ~~2-2813~~ 2-2812;

(r) All items of tangible personal property purchased from institutionally operated stores, canteens, and hobby shops by inmates, residents, or clients of such state institutions. Such exemption shall not apply to the employees of state institutions;

(s) Any organization listed in subdivision (i)

of this subsection or any governmental unit listed in subdivision (m) of this subsection, except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the tangible personal property physically incorporated into the construction, improvement, or repair;

(t) Manufacturing and processing equipment purchased on or after September 1, 1981, for use directly in manufacturing or processing operations, initially installed in a manufacturing facility of new construction begun on or after July 1, 1981. For purposes of this subdivision, the term new construction shall include (i) a new facility or the physical expansion of an existing facility or (ii) installation to achieve product diversification; and

(u) Food or food products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on October 1, 1983, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. As used in this subdivision, food does not include meals prepared for immediate consumption on or off the premises of the retailer and does not include foods sold through vending machines.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in sections 77-2701 to 77-27,135 shall not apply to:

(a) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person who causes tangible personal property to be brought into this state has already paid a



tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by sections 77-2701 to 77-27,135. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27,135 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(7) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed price contract, the contractor may apply to the Department of Revenue for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials incorporated into the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 9. That section 81-502, Revised Statutes Supplement, 1984, be amended to read as follows:

81-502. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause,

origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed child care facilities or applicants for licenses for child care facilities, upon request by the Department of Social Services, pursuant to section 71-1903;

(iii) Licensed providers of early childhood programs or applicants for licenses to provide such programs, upon request of the Department of Social Services, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, intermediate care facilities three, or other facilities or institutions which are mentioned in subdivision (1) of section 71-2017, or applicants for licenses for such facilities or institutions, upon request by the Department of Health, pursuant to section 71-2022; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data bearing thereon, to promulgate, alter, and enforce rules and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and explosives;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101 and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof; and

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to sections 81-502 to 81-552 and 81-5,115 to 81-5,146.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and as may be conferred and imposed by law.

(5) The rules and regulations adopted pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an undue severe or costly burden without substantially contributing to safety of persons or property. This section and the rules and regulations adopted pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal.

Sec. 10. That original sections 44-772, 44-3602, 71-2017.01, 71-2017.03, and 71-2018, Reissue Revised Statutes of Nebraska, 1943, and sections 71-2017, 71-2020, 77-2704, and 81-502, Revised Statutes Supplement, 1984, are repealed.