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REISSUE REVISED STATUTES

REVISED STATUTES
OF
NEBRASKA

2007 SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 38, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2007

Errata:

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

Reissue of Volumes 1 to 6

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

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2006 Supplement

Retain your 2006 Cumulative Supplement as the material included in it is not reproduced in the 2007 Supplement. The 2007 Supplement contains material from the 2007 regular legislative session.

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2007 Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the One Hundredth Legislature, First Session, 2007, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

Joanne M. Pepperl
Revisor of Statutes

Lincoln, Nebraska
August 1, 2007

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ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 11.

In order to sustain a claim of ineffective assistance of counsel as a violation of the Sixth Amendment to the U.S. Constitution and this provision, a defendant must show that (1) counsel's performance was deficient and (2) such deficient performance prejudiced the defendant, that is, demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. State v. Cardona, 10 Neb. App. 815, 639 N.W.2d 653 (2002).

Article VIII, sec. 1.

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

STATUTES OF THE STATE OF NEBRASKA

14-548.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as on appeal from a county board, and under sections 25-1901 through 25-1908, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

14-813.

An appeal from a special assessment by a metropolitan-class city taken as specified in this section means that proceedings from a district court shall be the same as on appeal from a county board, and under sections 25-1901 through 25-1908, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

16-117.

The character of a segment of an interstate highway sought to be annexed by a city of the first class is determined by the characteristic of the land immediately adjacent to the segment sought to be annexed. Adam v. City of Hastings, 12 Neb. App. 98, 668 N.W.2d 272 (2003).

16-118.

The character of a segment of an interstate highway sought to be annexed by a city of the first class is determined by the characteristic of the land immediately adjacent to the segment sought to be annexed. Adam v. City of Hastings, 12 Neb. App. 98, 668 N.W.2d 272 (2003).

23-135.

All claims arising ex contractu against a county must be filed with the county clerk within 90 days. Shaul v. Brenner, 10 Neb. App. 732, 637 N.W.2d 362 (2001).

23-168.03.

A board of supervisors is an administrative agency within the meaning of this section. Niewohner v. Antelope Cty. Bd. of Adjustment, 12 Neb. App. 132, 668 N.W.2d 258 (2003).

25-217.

This section does not allow Nebraska courts to extend the time for service of process, even in a case in which the wrong defendant was served within the 6-month grace period after filing a petition, because it is a self-executing statute which deprives a lower court of jurisdiction to take any further action in the case once the 6 months has run. Smeal v. Olson, 10 Neb. App. 702, 636 N.W.2d 636 (2001).

25-222.

In considering whether the discovery exception to the professional negligence statute of limitations applies, a court may consider the complexity of the documents and whether representations as to the contents of the documents were made in determining whether the case presents a factual question to be determined by the trier of fact. In-Line Suspension v. Weinberg & Weinberg, 12 Neb.App. 908, 687 N.W.2d 418 (2004).

A suit filed against an abstractor was time barred under this section because it was not filed within 1 year of discovery and because it was filed more than 10 years after the omission upon which the claim was based. Cooper v. Paap, 10 Neb. App. 243, 634 N.W.2d 266 (2001).

Abstractors are professionals for the purposes of this section. Cooper v. Paap, 10 Neb. App. 243, 634 N.W.2d 266 (2001).

25-328.

The interest required as a prerequisite to intervention under this section is a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action. In re Interest of Jamie P., 12 Neb. App. 261, 670 N.W.2d 814 (2003).

25-505.01.

Personal service at work rather than at home, despite the designation on the praecipe of where service should be effected, is nonetheless valid service. Hatcher v. McShane, 12 Neb. App. 239, 670 N.W.2d 638 (2003).

25-1028.

A notice did not inform the garnishee that if it failed to appear, default judgment would be taken against it. Lee Sapp Leasing v. Ciao Caffe & Espresso, Inc., 10 Neb. App. 948, 640 N.W.2d 677 (2002).

25-1030.01.

A notice of hearing for the determination of garnishee liability was given as required by this section where the county court entered an order setting the hearing on garnishee liability and requiring "due service" of the order on the parties, and notice of hearing as originally set and notice of continued hearing were sent to same address as the initial summons and garnishment interrogatories. General Serv. Bureau v. Moller, 12 Neb. App. 288, 672 N.W.2d 41 (2003).

This section does not require that notice of a garnishee liability hearing be given in a manner consistent with service of process on corporations. General Serv. Bureau v. Moller, 12 Neb. App. 288, 672 N.W.2d 41 (2003).

25-1030.02.

A garnishee is not liable to the plaintiff unless the judgment debtor had a right of action against the garnishee. Lee Sapp Leasing v. Ciao Caffe & Espresso, Inc., 10 Neb. App. 948, 640 N.W.2d 677 (2002).

25-1142.

Summary judgment is not a trial within the meaning of this section. Vesely v. National Travelers Life Co., 12 Neb. App. 622, 682 N.W.2d 713 (2004).

25-1148.

An application for a continuance must be in writing and supported by an affidavit which contains factual allegations demonstrating good cause or sufficient reason necessitating postponement of the proceedings. In re Interest of Azia B., 10 Neb. App. 124, 626 N.W.2d 602 (2001).

Failure to comply with this section is relevant as to whether the trial court abused its discretion. In re Interest of Azia B., 10 Neb. App. 124, 626 N.W.2d 602 (2001).

25-1301.

The two ministerial requirements for a final judgment are (1) a rendition of the judgment, defined as the act of the court or a judge thereof in making and signing a written notation of the relief granted or denied in an action, and (2) an "entry" of a final order, occurring when the clerk of the court places the file stamp and date upon the judgment. State v. Brown, 12 Neb. App. 940, 687 N.W.2d 203 (2004).

A trial docket note entered by the court was not a judgment. Lee Sapp Leasing v. Ciao Caffe & Espresso, Inc., 10 Neb. App. 948, 640 N.W.2d 677 (2002).

Any action purporting to be a judgment, decree, or final order must be rendered and entered to be valid, as provided by this section. Murray Constr. Servs. v. Meco-Henne Contracting, 10 Neb. App. 316, 633 N.W.2d 915 (2001).

25-1315.

Where multiple causes of action or multiple parties are involved, the trial court must both enter a final order pursuant to section 25-1902 and make an express determination that there is no just reason for delay and expressly direct the entry of judgment to make appealable an order adjudicating fewer than all claims or the rights and liabilities of fewer than all parties. Pioneer Chem. Co. v. City of North Platte, 12 Neb. App. 720, 685 N.W.2d 505 (2004).

Subsection (1) of this section is implicated only where multiple causes of action are presented or multiple parties are involved and a final judgment is entered as to one of the parties or causes of action. Parker v. Parker, 10 Neb. App. 658, 636 N.W.2d 385 (2001).

25-1334.

Under the terms of this section, affidavits offered for the truth of a particular fact (1) shall be made on personal knowledge, (2) shall set forth such facts as would be admissible into evidence, and (3) shall show affirmatively that the affiant is competent to testify to the matters stated therein. Richards v. Meeske, 12 Neb. App. 406, 675 N.W.2d 707 (2004).

25-1901.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1902.

Where multiple causes of action or multiple parties are involved, the trial court must both enter a final order pursuant to this section and make an express determination that there is no just reason for delay and expressly direct the entry of judgment to make appealable an order adjudicating fewer than all claims or the rights and liabilities of fewer than all parties. Pioneer Chem. Co. v. City of North Platte, 12 Neb. App. 720, 685 N.W.2d 505 (2004).

The three types of final orders which may be reviewed on appeal under this section are (1) an order which affects a substantial right in an action and which determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. Jacobson v. Jacobson, 10 Neb. App. 622, 635 N.W.2d 272 (2001).

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

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

25-1903.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal

whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1904.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1905.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1906.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1907.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1908.

An appeal from a special assessment by a metropolitan-class city taken as specified in section 14-813 means that proceedings from a district court shall be the same as an appeal from a county board, and under this section, that means appeal is taken by petition in error and the review is solely of the record made before the tribunal whose action is being reviewed. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-1912.

A notice of appeal filed before the trial court announces its "decision or final order" under subsection (2) of this section in final determination of an issue of costs cannot relate forward. J & H Swine, 12 Neb. App. 885, 687 N.W.2d 9 (2004).

Subsection (2) of this section was not intended to validate anticipatory notices of appeal filed prior to the announcement of a final judgment. J & H Swine, 12 Neb. App. 885, 687 N.W.2d 9 (2004).

Since a poverty affidavit which is substituted for the docket fee must be filed within the time and in the manner required for filing the docket fee in subsection (2) of this section, a poverty affidavit filed or deposited after the announcement of a decision or final order but before entry of the judgment, decree, or final order shall be treated as filed or deposited after the entry of the judgment, decree, or final order and on the date of entry of the judgment, decree, or final order. State v. Billups, 10 Neb. App. 424, 632 N.W.2d 375 (2001).

Where there is no trial, a pleading entitled "Motion for New Trial" is not properly considered as a motion for new trial and does not toll the running of the statutory time for filing an appeal from a trial court's order, but is only a motion to reconsider. Jackson v. Board of Equal. of City of Omaha, 10 Neb. App. 330, 630 N.W.2d 680 (2001).

25-2001.

The plain language of this section limits the operation of subsection (3) to nunc pro tunc orders as they existed under prior case law; that is, a nunc pro tunc order operates to correct a clerical error or a scrivener's error, not to change or revise a judgment or order, or set aside a judgment actually rendered, or to render an order different

from the one actually rendered, even if such order was not the order intended. In re Interest of Antone C. et al., 12 Neb. App. 466, 677 N.W.2d 190 (2004).

25-21,219.

The forcible entry and detainer statutes and the general stipulations for forfeiture in a lease are considered in equity for securing the rent, and not for forfeiting the lease, when the tenant acts in good faith and pays promptly on demand. McCombs Realty v. Western Auto Supply Co., 10 Neb. App. 962, 641 N.W.2d 77 (2002).

25-21,221.

The 3-day notice or "notice to quit" is necessary to obtaining an order of restitution in a forcible entry and detainer action. I.P. Homeowners v. Morrow, 12 Neb.App. 119, 668 N.W.2d 515 (2003).

25-21,271.

The mere fact that a petitioner is an inmate is not a substantial reason for denying a petition for name change. In re Change of Name of Picollo, 12 Neb. App. 174, 668 N.W.2d 712 (2003).

When considering a petition for name change, a district court must make findings sufficiently definitive that if an appeal is taken, the appellate court can determine whether or not the request for a name change was arbitrarily denied. In re Change of Name of Picollo, 12 Neb. App. 174, 668 N.W.2d 712 (2003).

25-2301.02.

A court is not required to conduct a hearing before denying an application to proceed in forma pauperis if the court has objected to the application on its own motion on the ground that the legal positions asserted therein are frivolous or malicious, and if the court provides a written statement of its reasons, findings, and conclusions for denying the application to proceed in forma pauperis. Moore v. Nebraska Bd. of Parole, 12 Neb. App. 525, 679 N.W.2d 427 (2004).

This section supersedes the requirement set forth in Flora v. Escudero, 247 Neb. 260, 526 N.W.2d 643 (1995), that a court provide a hearing before denying any application to proceed in forma pauperis. Moore v. Nebraska Bd. of Parole, 12 Neb. App. 525, 679 N.W.2d 427 (2004).

25-2728.

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to sections 29-824 to 29-826, because this section does not expressly exclude sections 29-824 to 29-826 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

25-2729.

The docket fee requirement contained in this section necessarily applies to appeals brought by a prosecuting attorney pursuant to sections 29-824 to 29-826, because section 25-2728 does not expressly exclude sections 29-824 to 29-826 from the application of this section. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in this section, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

25-2807.

Filing a notice of appeal falls within the "on appeal" language in this section, and consequently, an attorney may sign a notice of appeal on behalf of a party appealing from a small claims court decision. Hayes v. Applegarth, 10 Neb. App. 351, 631 N.W.2d 547 (2001).

27-403.

Even if statements made by the declarant while sleeping were relevant, their prejudicial nature outweighed their probative value. In re Interest of Jamie P., 12 Neb. App. 261, 670 N.W.2d 814 (2003).

27-404.

Prior conduct which is inextricably intertwined with the charged crime is not considered extrinsic evidence of other crimes or bad acts and is not rendered inadmissable by this section. State v. Powers, 10 Neb. App. 256, 634 N.W.2d 1 (2001).

27-605.

Although the defendant did not object to the judge's comments, the timely objection requirement was inapplicable because the trial judge had assumed the role of a witness. Krusemark v. Thurston Cty. Bd. of Equal., 10 Neb. App. 35, 624 N.W.2d 328 (2001).

27-614.

Pursuant to subsection (1) of this section, a trial court must act impartially and not prejudicially in exercising the discretionary power given to judges under this section to call and to interrogate witnesses. Gernstein v. Allen, 10 Neb. App. 214, 630 N.W.2d 672 (2001).

27-801.

Pursuant to subsection (4) of this section, the Nebraska rules of evidence provide that a statement is not hearsay if the statement is offered against a party and is a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. State v. Conn, 12 Neb. App. 635, 685 N.W.2d 357 (2004).

27-803.

Under the circumstances surrounding alleged statements made by the declarant while sleeping, the statements, as testified to by the declarant's sibling, were not excited utterances admissible under subsection (1) of this section and did not contain sufficient indicia of reliability to be admissible under subsection (23) of this section. In re Interest of Jamie P., 12 Neb. App. 261, 670 N.W.2d 814 (2003).

Pursuant to subsection (17) of this section, a videotape may be admissible pursuant to the learned treatise exception to the hearsay rule provided that sufficient foundation is laid for its admission. Hill v. Hill, 10 Neb. App. 570, 634 N.W.2d 811 (2001).

Pursuant to the language of Nebraska's learned treatise exception to the hearsay rule, a learned treatise is only admissible in conjunction with testimony by an expert witness. Hill v. Hill, 10 Neb. App. 570, 634 N.W.2d 811 (2001).

27-901.

A document is authenticated when evidence is presented that is sufficient to support a finding that the matter in question is what its proponent claims. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

28-204.

When a jury is the fact finder in a case involving accessory to a felony charges, the jury should be instructed so as to ensure that the underlying offense of the principal is specifically determined. State v. Romo, 12 Neb. App. 472, 676 N.W.2d 737 (2004).

A person must have reliable knowledge of the principal's identity to be guilty as an accessory under this section. Merely reporting false information about a crime without knowledge of the principal's identity constitutes the misdemeanor of false reporting, as defined by section 28-907. State v. Anderson, 10 Neb. App. 163, 626 N.W.2d 627 (2001).

28-305.

Manslaughter is a killing done upon a sudden quarrel, a legally recognized and sufficient provocation, which causes a reasonable person to lose normal self-control. State v. Butler, 10 Neb. App. 537, 634 N.W.2d 46 (2001).

The analysis of provocation which mitigates an intentional killing logically applies to assault cases as well, given that the core difference between the two crimes is generally whether the victim lives or dies. State v. Butler, 10 Neb. App. 537, 634 N.W.2d 46 (2001).

28-308.

A trier of fact can use common knowledge to determine if the victim has suffered serious bodily injury. In re Interest of Janet J., 12 Neb. App. 42, 666 N.W.2d 741 (2003).

28-311.01.

The pointing of a gun can be a "threat to commit a crime of violence" pursuant to this section; however, the pointing of a gun in self-defense is necessarily less serious than when no issue of self-defense is involved. State v. Oldenburg, 10 Neb. App. 104, 628 N.W.2d 278 (2001).

28-401.

Aiding and abetting possession is a lesser-included offense of aiding and abetting distribution. State v. McKimmey, 10 Neb. App. 595, 634 N.W.2d 817 (2001).

28-441.

Possession of drug paraphernalia is an infraction. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

28-703.

For purposes of the incest statute, a "minor" is defined as a child under the age of 19. State v. Johnson, 12 Neb. App. 247, 670 N.W.2d 802 (2003).

28-707.

A general finding of guilt under this section would not be a finding of felony assault because it is possible to commit the crime of child abuse by means other than by felony assault. In re Interest of Janet J., 12 Neb. App. 42, 666 N.W.2d 741 (2003).

28-905.

An attempt to arrest is an essential element of the offense of fleeing in a motor vehicle to avoid arrest, but proof that the defendant actually committed the law violation for which the arrest was attempted is not required. State v. Carman, 10 Neb. App. 373, 631 N.W.2d 531 (2001).

28-907.

A person must have reliable knowledge of the principal's identity to be guilty as an accessory under section 28-204. Merely reporting false information about a crime without knowledge of the principal's identity constitutes the misdemeanor of false reporting, as defined by this section. State v. Anderson, 10 Neb. App. 163, 626 N.W.2d 627 (2001).

28-1201.

A firearm does not have to be operable in order for the defendant to be guilty of use of a deadly weapon to commit a felony. State v. Clark, 10 Neb. App. 758, 637 N.W.2d 671 (2002).

The evidence was sufficient to support a conviction for use of a deadly weapon to commit a felony, even though a crime laboratory report indicated that the defendant's handgun was inoperable. The evidence indicated that the defendant used a weapon designed to expel a projectile, as the report stated that the handgun was a semiautomatic pistol with a matching magazine. State v. Clark, 10 Neb. App. 758, 637 N.W.2d 671 (2002).

28-1205.

A firearm does not have to be operable in order for the defendant to be guilty of use of a deadly weapon to commit a felony. State v. Clark, 10 Neb. App. 758, 637 N.W.2d 671 (2002).

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28-1409.

Pursuant to subsection (4)(a) of this section, to deprive a defendant of the defense of self-defense, the defendant's provocation must be with the intent that the defendant will then cause death or serious bodily injury to the one that the defendant provoked, and it must all occur in the same encounter. State v. Butler, 10 Neb. App. 537, 634 N.W.2d 46 (2001).

The use of deadly force is justifiable when the actor believes that such force is necessary to protect himself or herself against death or serious bodily harm unless the actor knows that he or she can avoid the necessity of using such force with complete safety by retreating. Newton v. Huffman, 10 Neb. App. 390, 632 N.W.2d 344 (2001).

28-1439.01.

Searches of the cooperating individual performed by citizens, trained by law enforcement officials and working as agents of law enforcement, along with other evidence, were valid to establish corroboration of the cooperating individual's testimony as required by this section. State v. Kuta, 12 Neb. App. 847, 686 N.W.2d 374 (2004).

29-116.

A defendant's successful motion in the district court to suppress evidence is not finally granted or determined, unless there is no appeal, until a judge of the Court of Appeals has decided the matter under this section. The time from the defendant's filing of such motion until final determination is excluded in the speedy trial calculation. State v. Hayes, 10 Neb. App. 833, 639 N.W.2d 418 (2002).

29-205.

A law enforcement officer investigating a crime has the authority to detain a suspect with an outstanding arrest warrant outside the law enforcement officer's primary jurisdiction. State v. Hill, 12 Neb. App. 492, 677 N.W.2d 525 (2004).

29-404.02.

A law enforcement officer may make a lawful arrest without a warrant if there exists a reasonable or probable cause that a person has committed a misdemeanor in the officer's presence. Newton v. Huffman, 10 Neb. App. 390, 632 N.W.2d 344 (2001).

29-404.03.

The totality of the circumstances, including a suspect's attempt to flee from a police officer, established reasonable or probable cause that the suspect was driving while his driver's license was still under suspension, which was a misdemeanor; thus, the officer had probable cause to arrest the suspect. Newton v. Huffman, 10 Neb. App. 390, 632 N.W.2d 344 (2001).

29-427.

Any peace officer having grounds for making an arrest may take the accused into custody or, already having done so, detain him further when the accused fails to identify himself satisfactorily or refuses to sign the citation or when the officer has reasonable grounds to believe that such action is necessary in order to carry out legitimate investigative functions. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

Except as provided in this section, for any offense classified as an infraction, a citation shall be issued in lieu of arrest or continued custody. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

29-435.

Except as provided in section 29-427, for any offense classified as an infraction, a citation shall be issued in lieu of arrest or continued custody. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).

29-741.

Breaking the terms of bail, probation, or parole is a basis for extradition under this section. State ex rel. Borrink v. State, 10 Neb. App. 293, 634 N.W.2d 18 (2001).

29-824.

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-825 and 29-826, because section 25-2728 does not expressly exclude this section and sections 29-825 and 29-826 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-

826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

29-825.

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-824 and 29-826, because section 25-2728 does not expressly exclude this section and sections 29-824 and 29-826 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

29-826.

The docket fee requirement contained in section 25-2729 necessarily applies to appeal brought by a prosecuting attorney pursuant to this section and sections 29-824 and 29-825, because section 25-2728 does not expressly exclude this section and sections 29-824 and 29-825 from the application of section 25-2729. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where a county court fails to fix a time in which the State may appeal under this section, the State must file its notice of intention to seek review of the county court's order within 10 days; failure to do so deprives the district court of subject matter jurisdiction to hear the State's appeal. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

Where the State is appealing an order of a county court granting a motion for the return of seized property or to suppress evidence pursuant to sections 29-824 to 29-826, the State must comply with the standard procedures for appeal as provided in section 25-2729, as well as with the requirements specified within sections 29-824 to 29-826; failure to do so deprives the district court of subject matter jurisdiction to review the order. State v. McArthur, 12 Neb. App. 657, 685 N.W.2d 733 (2004).

29-1207.

Nebraska case law and the plain language of this section make it clear that the 6-month speedy trial period begins to run upon the filing of the information in district court. The time during which an underlying complaint is pending in county court before the defendant is bound over to district court is not counted. State v. Timmerman, 12 Neb. App. 934, 687 N.W.2d 24 (2004).

Where misdemeanor counts are filed with felony counts and it is clear that the State intends to try the misdemeanor and felony offenses together, the time that the misdemeanors and felonies were pending in county court is not tacked on for speedy trial purposes. State v. Timmerman, 12 Neb. App. 934, 687 N.W.2d 24 (2004).

The 6-month timeframe provided by this section is a useful standard for assessing whether the length of the delay under the Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 1282, 33 L. Ed. 2d 101 (1972), speedy trial test is unreasonable under the Constitutions, both state and federal. State v. Robinson, 12 Neb. App. 897, 687 N.W.2d 15 (2004).

A defendant's successful motion in the district court to suppress evidence is not finally granted or determined, unless there is no appeal, until a judge of the Court of Appeals has decided the matter under section 29-116. The time from the defendant's filing of such a motion until final determination is excluded in the speedy trial calculation. State v. Hayes, 10 Neb. App. 833, 639 N.W.2d 418 (2002).

29-1208.

Two counts of an amended information, which were the same as counts found in the original information, were required to be dismissed under this section, but a new count was not affected, because 6 months had not passed since that charge had been filed. State v. Thompson, 10 Neb. App. 69, 624 N.W.2d 657 (2001).

29-2221.

Generally, one deemed to be a habitual criminal shall be punished by imprisonment for a mandatory minimum term of 10 years and a maximum term of not more than 60 years upon each conviction for a felony committed subsequent to the prior convictions used as the basis for the habitual criminal charge. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

Under subsection (1) of this section, a defendant convicted of a felony may be deemed a habitual criminal if the defendant has been (1) twice previously convicted of a crime, (2) sentenced, and (3) committed to prison for terms of not less than 1 year each. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

29-2222.

This section is a "statutory recipe" for proving former judgments and commitments for habitual criminal purposes and the Legislature has expressly provided that a duly authenticated copy of the former judgment and commitment is competent and prima facie evidence thereof. State v. Taylor, 12 Neb. App. 58, 666 N.W.2d 753 (2003).

29-2261.

The mandated presentence investigation is not required before a felony sentencing when it is "impractical" or when the defendant waives the right to a presentence investigation. State v. Kellogg, 10 Neb. App. 557, 633 N.W.2d 916 (2001).

29-2280.

This section vests trial courts with the authority to order restitution for actual damages sustained by the victim of a crime for which a defendant is convicted. State v. Hosack, 12 Neb. App. 168, 668 N.W.2d 707 (2003).

29-2281.

Before restitution can be properly ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. State v. Hosack, 12 Neb. App. 168, 668 N.W.2d 707 (2003).

29-3001.

For postconviction relief to be granted under this section, the defendant must allege facts which, if proved, constitute a denial or violation of his or her rights under the U.S. or Nebraska Constitution. State v. Davlin, 10 Neb. App. 866, 639 N.W.2d 168 (2002).

29-3805.

Good cause existed to continue a trial that charged a prisoner, who was incarcerated on an unrelated offense, with making terroristic threats against a juvenile court judge, beyond the 180-day time limit in this section setting forth requirements for when the untried charges were to be brought to trial. The day after the pretrial conference setting the trial date, the juvenile court judge informed the State he would be unavailable for trial on that date, and the State came forward as soon as possible after the trial was scheduled to inform the court and opposing counsel about the conflict. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

"Good cause" in intrastate or interstate detainer statutes means a substantial reason; one that affords legal excuse. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Good cause in statutory provisions setting forth requirements for disposition of untried cases is something that must be substantial, but also a factual question dealt with on a case-by-case basis. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Good cause under statutory provisions setting forth requirements for disposition of untried cases encompasses a situation where a witness is unavailable. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

Whether good cause exists for extending the time limit in this section, setting forth when untried charges are brought to trial, is a subjective, factual question within the discretion of the trial court. State v. Caldwell, 10 Neb. App. 803, 639 N.W.2d 663 (2002).

30-2470.

The personal representative of a decedent's estate, not its beneficiary, has standing to seek to set aside a decedent's inter vivos transfer of bonds. Hampshire v. Powell, 10 Neb. App. 148, 626 N.W.2d 620 (2001).

30-2476.

Generally, a beneficiary has no standing to prosecute a claim for the protection of the estate under subsection (22) of this section. Hampshire v. Powell, 10 Neb. App. 148, 626 N.W.2d 620 (2001).

30-2647.

A conservator has a duty to provide suitable records of his or her administration under this section, and therefore, probate courts have the power to enforce compliance with this section in proper situations. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

Generally, "suitable records" means those papers and original documents supporting and verifying the conservator's accounts, but a more precise definition depends on the case before the court dealing with a request for compliance with this section. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

The term "suitable records" within this section may include bank statements, canceled checks, deposit slips, and certificates of deposit. In re Guardianship & Conservatorship of Borowiak, 10 Neb. App. 22, 624 N.W.2d 72 (2001).

34-301.

In determining whether an adverse possessor had exclusive use of the disputed property, it is irrelevant whether the titleholders communicated their use of the disputed property to the adverse possessor or his or her predecessor in interest. Madson v. TBT Ltd. Liability Co., 12 Neb. App. 773, 686 N.W.2d 85 (2004).

42-364.

Subsection (5) of this section clearly gives the trial court the authority to order joint custody, even where one of the parents refuses to consent, if the court holds a hearing and specifically finds that joint custody is in the child's best interests. Kay v. Ludwig, 12 Neb. App. 868, 686 N.W.2d 619 (2004).

The best interests of the child are paramount in decisions concerning child visitation modifications. Walters v. Walters, 12 Neb. App. 340, 673 N.W.2d 585 (2004).

In determining a child's best interests in custody and visitation matters, factors to be considered include the relationship of the minor child to each parent; the desires and wishes of the minor child; the general health, welfare, and social behavior of the minor child; and credible evidence of abuse. Schnell v. Schnell, 12 Neb. App. 321, 673 N.W.2d 578 (2003).

43-247.

Pursuant to subsection (6) of section 43-292, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of this section, 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. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Under subsection (3)(a) of this section, the juvenile court continues to have jurisdiction over adjudicated children, either until their age of majority or until they become adopted, and until such time, the court has the authority to enter orders that are in the best interests of the children. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Only the county attorney can initiate proceedings in juvenile court under subsections (1) through (4) of this section. In re Interest of Valentin V., 12 Neb. App. 390, 674 N.W.2d 793 (2004).

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, an order under section 43-254 and subsection (3)(a) of this section after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing is final and thus appealable. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

The burden is upon the State to allege and prove in a detention hearing that the juvenile court should not place children with their other natural parent after the expiration of the first 48 hours of emergency detention under subsection (4) of section 43-250 during a period of temporary detention pending adjudication spawned by allegations under subsection (3)(a) of this section against their custodial parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

The dual purpose of proceedings brought under subsection (3)(a) of this section, to protect the welfare of the child and to safeguard the parent's right to properly raise his or her own child, is applicable even though the allegation is that the child lacks proper parental care by reason of the fault or habits of his or her parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

43-248.

When a juvenile is taken into temporary custody pursuant to subsection (5) of this section, a peace officer may conduct a search incident to temporary detention. In re Interest of Jabreco G., 12 Neb. App. 667, 683 N.W.2d 386 (2004).

43-250.

The burden is upon the State to allege and prove in a detention hearing that the juvenile court should not place children with their other natural parent after the expiration of the first 48 hours of emergency detention under subsection (4) of this section during a period of temporary detention pending adjudication spawned by allegations under subsection (3)(a) of section 43-247 against their custodial parent. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

43-254.

Although an ex parte temporary detention order keeping a juvenile's custody from his or her parent for a short period of time is not final, an order under this section and subsection (3)(a) of section 43-247 after a hearing which continues to keep a juvenile's custody from the parent pending an adjudication hearing is final and thus appealable. In re Interest of Stephanie H. et al., 10 Neb. App. 908, 639 N.W.2d 668 (2002).

43-272.01.

If the record supports the action, either the trial court or the appellate court can disallow guardian ad litem fees as too high, without the support of expert testimony. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

The touchstone for awarding guardian ad litem fees is reasonableness, both of the necessity of the services rendered and the fees awarded. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

Without something to support a finding that a guardian ad litem's fact investigation was not proper or not required, the disallowance of a charge as unreasonable on the ground that the investigation was unnecessary is questionable. In re Interest of Antone C. et al., 12 Neb. App. 152, 669 N.W.2d 69 (2003).

43-274.

Juvenile court did not err in refusing to allow an intervenor to proceed on the intervenor's petition where there was no evidence to establish the county attorney's consent to the filing of the intervenor's petition as required by this section. In re Interest of Jamie P., 12 Neb. App. 261, 670 N.W.2d 814 (2003).

43-279.01.

Burden of proof and standard of proof are interchangeable terms. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

43-283.01.

Pursuant to subsection (6) of section 43-292, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under this section, under the direction of the court, have failed to correct the conditions leading to the determination. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (4)(b) of this section, clear and convincing evidence that the parent of the juvenile has committed first or second degree murder of another child of the parent, or has committed voluntary manslaughter of another child of the parent, excuses the Department of Health and Human Services from the requirement to make reasonable efforts to reunify the family. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A finding of "felony child abuse" does not satisfy the requirements of subsection (4)(b)(iv) of this section, and there is no crime called "felony child abuse" in Nebraska. In re Interest of Janet J., 12 Neb. App. 42, 666 N.W.2d 741 (2003).

Where the State removes a child from the family, this section requires the State to make reasonable efforts to preserve and reunify the family, and if properly raised, a parent is entitled to a ruling on whether the State has complied with the legislative mandate of this section. In re Interest of DeWayne G. & Devon G., 10 Neb. App. 177, 625 N.W.2d 849 (2001).

43-291.

Although there may have been no prior juvenile court action, including adjudication, the juvenile court acquires jurisdiction to terminate parental rights when a motion to terminate parental rights containing the grounds for termination is filed under subsections (1) through (5) of section 43-292. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

In a hearing on the termination of parental rights without a prior adjudication, where such termination is sought under subsections (1) through (5) of section 43-292, such proceedings must be accompanied by due process safeguards, as statutory provisions cannot abrogate constitutional rights. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

43-292.

In order to terminate parental rights, the State must prove by clear and convincing evidence that one of the statutory grounds enumerated in this section exists and that termination is in the child's best interests. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Only one ground for termination under this section need be proved in order to terminate parental rights. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (2) of this section, termination of parental rights requires a finding that a parent has substantially and continuously or repeatedly neglected and refused to give the juvenile necessary parental care and protection. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (6) of this section, termination of parental rights requires a finding that following a determination that the juvenile is one as described in subsection (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. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

Pursuant to subsection (7) of this section, termination of parental rights requires a finding that the juvenile has been in an out-of-home placement for 15 or more months of the most recent 22 months. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

The plain language of subsection (10) of this section does not require a criminal conviction or proof beyond a reasonable doubt that a parent has committed voluntary manslaughter or murder of his or her child, but merely clear and convincing evidence that the parent "committed" murder or voluntary manslaughter of his or her child. In re Interest of Anthony V., 12 Neb. App. 567, 680 N.W.2d 221 (2004).

A combination of the best interests of the child and evidence of fault or neglect on the part of the parent is required to terminate a parent's natural right to the custody of his or her own child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, a court may terminate parental rights if the parent has abandoned the juvenile for 6 months or more immediately prior to the filing of the petition. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, abandonment, for purposes of determining whether termination of parental rights is warranted has been described as a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and opportunity for the display of parental affection for the child. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Pursuant to subsection (1) of this section, the term "immediately prior" regarding abandonment means the time period determined by counting back 6 months from the filing date of the petition. In re Interest of Crystal C., 12 Neb. App. 458, 676 N.W.2d 378 (2004).

Whether termination of parental rights is in the best interests of a child involves consideration of two aspects: (1) what the child might gain or lose by a continued relationship with the parent and (2) what the child might gain by the prospects of new relationships which the termination might open for the child. In re Interest of Heather G. et al., 12 Neb. App. 13, 664 N.W.2d 448 (2003).

Although there may have been no prior juvenile court action, including adjudication, the juvenile court acquires jurisdiction to terminate parental rights when a motion to terminate parental rights containing the grounds for termination is filed under subsections (1) through (5) of this section. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

In a hearing on the termination of parental rights without a prior adjudication, where such termination is sought under subsections (1) through (5) of this section, such proceedings must be accompanied by due process safeguards, as statutory provisions cannot abrogate constitutional rights. In re Interest of Brook P. et al., 10 Neb. App. 577, 634 N.W.2d 290 (2001).

The language of this section imposes two requirements before parental rights may be terminated: (1) the existence of one or more conditions listed in this section and (2) the best interests of the child. In re Interest of Azia B., 10 Neb. App. 124, 626 N.W.2d 602 (2001).

Pursuant to subsection (2) of this section, lack of proper parental care of one child in a family can be a ground for termination of parental rights with respect to another child of the parents. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

The essence of issue preclusion is that once parents have litigated their treatment of their child's sibling in an adjudication proceeding, they are not entitled to another opportunity to litigate the same issue in a subsequent proceeding involving the child under subsection (2) of this section. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

The State may use factual findings from a sibling's case, when proved true by clear and convincing evidence, as a basis for termination of parental rights to a sibling. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

While a decision from the Nebraska Court of Appeals affirming a juvenile court's termination of parental rights may be further reviewed by the Nebraska Supreme Court, under subsection (2) of this section, the Court of Appeals' decision is final for collateral estoppel purposes. In re Interest of Jaden H., 10 Neb. App. 87, 625 N.W.2d 218 (2001).

43-293.

According to this section, an order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other. In re Interest of Stacey D. & Shannon D., 12 Neb. App. 707, 684 N.W.2d 594 (2004).

43-1227.

A person whose only claim to the custody of a child is that he or she had possession of the child for a short period of time in the recent past does not have a colorable right to the custody of the child and is not a person acting as a parent. Garcia v. Rubio, 12 Neb. App. 228, 670 N.W.2d 475 (2003).

43-1243.

The statutory provision to contact the out-of-state court is not mandatory but merely directory. Garcia v. Rubio, 12 Neb. App. 228, 670 N.W.2d 475 (2003).

43-1415.

When genetic tests show a probability of paternity of 99 percent or more, a rebuttable presumption is created without the need for any other evidence. State on behalf of Dady v. Snelling, 10 Neb. App. 740, 637 N.W.2d 906 (2001).

48-101.

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

48-120.

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

48-121.

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

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

48-125.

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

48-133.

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

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

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

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

48-134.

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

48-139.

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

48-140.

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

48-141.

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

48-168.

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

48-179.

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

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

52-401.

The lien of a physician, nurse, hospital, or other health care provider cannot exceed the amount the health care provider agreed to accept for the services rendered to a patient, even if the usual and customary charge for such services is greater than that sum. Midwest Neurosurgery v. State Farm Ins. Cos., 12 Neb. App. 328, 673 N.W.2d 228 (2004).

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

60-498.01.

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

60-6,196.

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

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

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

71-908.

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

71-930.

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

71-959.

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

77-1361.

Pursuant to subsection (1) of this section, agricultural land constitutes a separate and distinct class of property for purposes of property taxation. Schmidt v. Thayer Cty. Bd. of Equal., 10 Neb. App. 10, 624 N.W.2d 63 (2001).

77-1363.

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

77-1504.01.

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

77-2703.

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

77-5015.

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

77-5019.

Pursuant to subsection (2) of this section, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

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

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

Pursuant to subsection (5) of this section, when reviewing a judgment of the Tax Equalization and Review Commission for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

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

77-5023.

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

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

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

83-1,111.

This section was amended to provide a prisoner, whose eligibility for parole was previously deferred for later consideration, with an annual parole review and a parole hearing if it is determined in the review that the prisoner is reasonably likely to be granted parole. This section, prior to the amendments, provided a prisoner, whose eligibility for parole was previously deferred for consideration, with an annual parole hearing. Implementation of the amendments does not violate the Ex Post Facto Clause, because the amendments merely alter the method to be followed in fixing a parole release date under identical substantive standards as previously established, do not create a sufficient risk of increasing the measure of punishment attached to a sentence, and do not modify the statutory punishment imposed for any offenses or alter the standards for determining the initial date for parole eligibility or an inmate's suitability for parole. The amendments merely change the process by which the parole board reviews prisoners' parole possibilities, and implementation of the amendments will not result in a longer period of incarceration for prisoners. Moore v. Nebraska Bd. of Parole, 12 Neb. App. 525, 679 N.W.2d 427 (2004).

83-4,122.

Pursuant to subsection (4) of this section, a charged inmate's request to produce relevant documentary evidence should generally be permitted unless allowing the inmate to do so will be unduly hazardous to institutional safety or correctional goals. Barnes v. Nebraska Dept. of Corr. Servs., 12 Neb. App. 453, 676 N.W.2d 385 (2004).

Pursuant to subsection (4) of this section, when the disciplinary committee declines a charged inmate's request to produce relevant documentary evidence in the inmate's defense, the committee should make a finding regarding the reasons for denial of the request. Barnes v. Nebraska Dept. of Corr. Servs., 12 Neb. App. 453, 676 N.W.2d 385 (2004).

There is no due process violation when there is a "legitimate penological concern" to deny the defendant's request for a witness to be present at an institutional disciplinary committee hearing for the defendant's use of drugs. Claypool v. Nebraska Dept. of Corr. Servs., 12 Neb. App. 87, 667 N.W.2d 267 (2003).

CONSTITUTION OF THE STATE OF NEBRASKA OF 1875, AND SUBSEQUENT AMENDMENTS

ARTICLE II
DISTRIBUTION OF POWERS

Section.
1. Legislative, executive, judical.

Sec. 1. Legislative, executive, judicial. (1) The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.

(2) Notwithstanding the provisions of subsection (1) of this section, supervision of individuals sentenced to probation, released on parole, or enrolled in programs or services established within a court may be undertaken by either the judicial or executive department, or jointly, as provided by the Legislature.

Source: Neb. Const. art. II, sec. 1 (1875); Amended 2006, Laws 2006, LR274CA, sec. 1.

ARTICLE VII
EDUCATION

Section.
7. Perpetual fund enumerated.
8. Trust funds belong to state for educational purposes; use; investment.
9. Educational funds; trust funds; use; early childhood education endowment fund; created; use; early childhood education, defined.

Sec. 7. Perpetual funds enumerated. The following are hereby declared to be perpetual funds for common school purposes, including early childhood educational purposes operated by or distributed through the common schools, of which the annual interest or income only can be appropriated, to wit:

First. Such percent as has been, or may hereafter be, granted by Congress on the sale of lands in this state.

Second. All money arising from the sale or leasing of sections number sixteen and thirty-six in each township in this state, and the lands selected, or that may be selected, in lieu thereof.

Third. The proceeds of all lands that have been, or may hereafter be, granted to this state, where by the terms and conditions of such grant the same are not to be otherwise appropriated.

Fourth. The net proceeds of lands and other property and effects that may come to this state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of the estates of deceased persons.

Fifth. All other property of any kind now belonging to the perpetual fund.

Source: Neb. Const. art. VIII, sec. 7 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 20; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 7; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

Sec. 8. Trust funds belong to state for educational purposes; use; investment. All funds belonging to the state for common school purposes, including early childhood educational purposes operated by or distributed through the common schools, the interest and income whereof only are to be used, shall be deemed trust funds. Such funds with the interest and income thereof are hereby solemnly pledged to the purposes for which they are granted and set apart and shall not be transferred to any other fund for other uses. The state shall supply any net aggregate losses thereof realized at the close of each calendar year that may in any manner accrue. Notwithstanding any other provisions in this Constitution, such funds shall be invested as the Legislature may by statute provide.

Source: Neb. Const. art. VIII, sec. 8 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 21; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 8; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

Sec. 9. Educational funds; trust funds; use; early childhood education endowment fund; created; use; early childhood education, defined. (1) The following funds shall be exclusively used for the support and maintenance of the common schools in each school district in the state or for early childhood education operated by or distributed through the common schools as provided in subsection (3) of this section, as the Legislature shall provide:

(a) Income arising from the perpetual funds;

(b) The income from the unsold school lands, except that costs of administration shall be deducted from the income before it is so applied;

(c) All other grants, gifts, and devises that have been or may hereafter be made to the state which are not otherwise appropriated by the terms of the grant, gift, or devise; and

(d) Such other support as the Legislature may provide.

(2) No distribution or appropriation shall be made to any school district for the year in which school is not maintained for the minimum term required by law.

(3)(a) An early childhood education endowment fund shall be created for the purpose of supporting early childhood education in this state as provided by the Legislature.

(b) An amount equal to forty million dollars of the funds belonging to the state for common school and early childhood educational purposes operated by or distributed through the common schools described in Article VII, section 7, of this Constitution shall

be allocated for the early childhood education endowment fund.

(c) Only interest or income on such early childhood education endowment fund may be appropriated as provided by the Legislature for the benefit of the common schools and for the exclusive purpose of supporting early childhood education in this state.

(d) For purposes of Article VII of this Constitution, early childhood education means programs operated by or distributed through the common schools promoting development and learning for children from birth to kindergarten-entrance age.

(e) If the annual income from twenty million dollars of private funding is not irrevocably committed by July 1, 2011, to the use of the early childhood education endowment fund, then the forty-million-dollar allocation pursuant to subdivision (3)(b) of this section may revert to the use of the common schools as the Legislature shall determine.

Source: Neb. Const. art. VIII, sec. 9 (1875); Amended 1908, Laws 1907, c. 201, sec. 1, p. 580; Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 9; Amended 1966, Laws 1965, c. 302, sec. 2(1), p. 852; Amended 1970, Laws 1969, c. 423, sec. 1, p. 1439; Amended 1972, Laws 1972, LB 1023, sec. 1; Amended 2006, Laws 2006, LB 1006, sec. 1.

CHAPTER 1
ACCOUNTANTS

Article.
1. Accountants. 1-124,1-136.02.

ARTICLE 1

ACCOUNTANTS

Section.
1-124. Certified public accountant; reciprocal certificate; waiver of examination; fee.
1-136.02. Permit; when issued.

1-124 Certified public accountant; reciprocal certificate; waiver of examination; fee. (1)(a) The board may, in its discretion, waive the examination described in section 1-114 and may issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114 and section 1-116 and who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, comparable to that of a certified public accountant of this state, which is then in full force and effect.

(b) The board shall waive the examination described in section 1-114 and the educational requirements specified in section 1-116 and shall issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114, who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state, who meets all other current requirements of the board for issuance of a certificate as a certified public accountant, and who, at the time of the application for a reciprocal certificate as a certified public accountant, has had, within the ten years immediately preceding application, at least four years' experience in the practice of public accountancy specified in subsection (1) of section 1-136.02.

(2) The board shall charge each person obtaining a reciprocal certificate issued under this section a fee as established by the board not to exceed four hundred dollars.

Source: Laws 1957, c. 1, § 19, p. 60; Laws 1976, LB 619, § 7; Laws 1976, LB 961, § 2; Laws 1977, LB 290, § 2; Laws 1979, LB 278, § 3; Laws 1984, LB 473, § 12; Laws 1991, LB 75, § 11; Laws 1997, LB 114, § 21; Laws 2003, LB 214, § 5; Laws 2007, LB24, § 1.
Effective date February 1, 2007.

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 or a 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. Effective date February 1, 2007.

CHAPTER 2
AGRICULTURE

Article.

ARTICLE 1

NEBRASKA STATE FAIR BOARD

Section.

2-108 Nebraska State Fair Support and Improvement Cash Fund; created; use; investment. The Nebraska State Fair Support and Improvement Cash Fund is created. The fund shall be maintained in the state accounting system as a cash fund. The State Treasurer shall credit to the fund the disbursement of state lottery proceeds designated for the Nebraska State Fair and matching funds from the most populous city within the county in which the state fair is located. The balance of any fund that is administratively created to receive lottery proceeds designated for the Nebraska State Fair and matching fund revenue prior to May 25, 2005, shall be transferred to the Nebraska State Fair Support and Improvement Cash Fund on such date. The Nebraska State Fair Support and Improvement Cash Fund shall be expended by the Nebraska State Fair Board to provide support for operating expenses and capital facility enhancements, including conducting or providing financial support for studies of facility

conditions of the Nebraska State Fairgrounds and needs as well as other facility planning activities. Expenditures from the fund shall not be limited to the amount appropriated. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 426, § 4; Laws 2007, LB435, § 1.
Effective date May 17, 2007.

Cross Reference

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

2-111 Annual report; study of capital facilities and infrastructure requirements. (1) 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 (a) a detailed listing of how the proceeds of the fund were expended in the prior fiscal year and (b) any distributions from the fund that remain unexpended and on deposit in Nebraska State Fair accounts.

(2) The Nebraska State Fair Board shall cooperate with a study by the Agriculture Committee of the Legislature of capital facilities and infrastructure requirements to serve the purposes and goals of the Nebraska State Fair and other uses of the Nebraska State Fairgrounds as a year-round multipurpose facility sufficient to host and accommodate events and attractions of local, state, and regional interest and attendance. The Nebraska State Fair Board may utilize available funds, not to exceed one hundred fifty thousand dollars, including funds disbursed from the Nebraska State Fair Support and Improvement Cash Fund and other resources, to assist in completion of such study. This subsection terminates on January 1, 2008.

Source: Laws 2005, LB 426, § 7; Laws 2007, LB435, § 2.
Effective date May 17, 2007.

2-131 Agriculture Committee of the Legislature; conduct study of Nebraska State Fair; components; Department of Administrative Services; duties; report; hearing. (1) The Agriculture Committee of the Legislature, with the assistance of the state building division of the Department of Administrative Services, shall conduct a study of the Nebraska State Fair consisting of the following components and any other information deemed relevant:

(a)(i) What capital facilities and infrastructure does the Nebraska State Fairgrounds require at its present location to serve the fifteen-year program needs of the State of Nebraska as a state fair site and as a year-round multipurpose facility sufficient to attract a local, state, and regional audience; and

(ii) What is the projected fifteen-year revenue and cash-flow analysis, including capital construction, operation and maintenance, repair, and code compliance, necessary to meet the program needs identified in subdivision (a)(i) of this subsection; and

(b)(i) What would a new state fairgrounds at a new undetermined and nonspecific site need to include to serve a comparable fifteen-year program for a state fairgrounds and year-round multipurpose facility sufficient to attract a local, state, and regional audience; and

(ii) What is the projected fifteen-year revenue and cash-flow analysis, including capital construction, operation and maintenance, repair, and code compliance, necessary to meet the program needs of the Nebraska State Fair as identified in subdivision (b)(i) of this subsection at a new state fairgrounds location.

(2) The Department of Administrative Services, in consultation with the Agriculture Committee of the Legislature and the Executive Board of the Legislative Council, shall commission an independent, neutral consultant to provide analysis and recommendations relevant to the purposes of the study. The Department of Administrative Services shall utilize funds provided from nongeneral fund contributions received from any source, public or private, to defray the costs of such independent consultant commissioned to perform analysis contemplated under this section. Copies of the report of the analysis and recommendations of such consultant shall be delivered to the chairperson of the Agriculture Committee of the Legislature, the Nebraska State Fair Board, the Clerk of the Legislature, and the Governor on or before November 15, 2007.

(3) The Agriculture Committee of the Legislature shall provide a report of its findings and recommendations arising from the study pursuant to this section on or before December 15, 2007. The committee shall conduct at least one public hearing subsequent to the receipt of the report of the analysis and recommendations of any independent consultant commissioned pursuant to subsection (2) of this section.

(4) This section terminates on January 1, 2008.

Source: Laws 2007, LB435, § 3.
Effective date May 17, 2007.
Termination date January 1, 2008.

ARTICLE 2

STATE AND COUNTY FAIRS

(f) COUNTY AGRICULTURAL SOCIETY ACT

Section.
2-257. Tax levy.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-257 Tax levy. (1) The county board may, at the time other levies and assessments for taxation are made and subject to section 77-3443, levy a tax upon all of the taxable property within the county for the operation of the county agricultural society. The tax shall be assessed,

levied, and collected as other county taxes. The proceeds of such tax shall be paid by the county treasurer to the treasurer of the board of directors of such county agricultural society on or before the fifteenth day of each month or more frequently as provided in section 77-1759.

(2) The county agricultural society may act to exceed the allocation provided by the county board under section 77-3444, but if the county agricultural society acts to exceed the allocation, the total levy shall not exceed three and one-half cents per one hundred dollars of valuation.

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-203; Laws 1949, c. 4, § 1(2), p. 60; Laws 1969, c. 11, § 3, p. 148; Laws 1975, LB 378, § 2; Laws 1979, LB 187, § 3; Laws 1992, LB 719A, § 2; Laws 1996, LB 1085, § 3; Laws 1996, LB 1114, § 7; Laws 1997, LB 269, § 2; R.S.Supp.,1996, § 2-203.01; Laws 1997, LB 469, § 8; Laws 2007, LB334, § 1.
Operative date July 1, 2007.

ARTICLE 9

NOXIOUS WEED CONTROL

Section.

2-945.01 Act, how cited. Sections 2-945.01 to 2-968 shall be known and may be cited as the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 1; Laws 1994, LB 76, § 450; Laws 2004, LB 869, § 1; Laws 2006, LB 1226, § 2; Laws 2007, LB701, § 3.
Effective date May 2, 2007.

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed. (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 the policy established in section 2-968. Beginning in fiscal year 2007-08, 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 for the first year 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, 2009.

(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.

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

Cross Reference

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, 2009.

Source: Laws 2007, LB701, § 1.
Effective date May 2, 2007.
Termination date June 30, 2009.

2-968 Riparian Vegetation Management Task Force; duties; meetings; recommendations; 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. The task force shall make preliminary recommendations to the Governor and the Legislature regarding funding and legislation needed to achieve its goals on or before December 15, 2007, and each year thereafter, with a final report due prior to June 30, 2009. It is the intent of the Legislature that expenses of the task force be paid from funds appropriated for Laws 2007, LB 701, and shall not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2009.

Source: Laws 2007, LB701, § 2.
Effective date May 2, 2007.
Termination date June 30, 2009.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

(e) WATER PLANNING AND REVIEW PROCESS

Section.
2-15,100. Water planning and review; how conducted; assistance.

(e) WATER PLANNING AND REVIEW PROCESS

2-15,100 Water planning and review; how conducted; assistance. The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environmental Quality, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB296, § 16.
Operative date July 1, 2007.

ARTICLE 26

PESTICIDES

Section.
2-2626. Department; powers and duties.

2-2626 Department; powers and duties. The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2006. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the

Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any building or place owned, controlled, or operated by a registrant, licensed certified applicator, or dealer if, from probable cause, it appears that the building or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or

use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17. Operative date July 1, 2007.

ARTICLE 32

NATURAL RESOURCES

Section.

2-3202 Terms, defined. For purposes of Chapter 2, article 32, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Natural resources district or district means a natural resources district operating pursuant to Chapter 2, article 32;

(3) Board means the board of directors of a district;

(4) Director means a member of the board;

(5) Other special-purpose districts means rural water districts, drainage districts, reclamation districts, and irrigation districts;

(6) Manager means the chief executive hired by a majority vote of the board to be the supervising officer of the district; and

(7) Department means the Department of Natural Resources.

Source: Laws 1969, c. 9, § 2, p. 101; Laws 1972, LB 543, § 2; Laws 1973, LB 335, § 2; Laws 1984, LB 861, § 1; Laws 1988, LB 1045, § 1; Laws 1994, LB 480, § 1; Laws 1998, LB 896, § 2; Laws 2000, LB 900, § 51; Laws 2006, LB 1113, § 13; Laws 2007, LB701, § 5.
Effective date May 2, 2007.

Cross Reference

Department of Natural Resources, see Chapter 61, article 2.
Nebraska Natural Resources Commission, see section 2-1504.

2-3225 Districts; tax; levies; limitation; use; collection. (1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

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

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

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

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

Cross Reference

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

2-3226.01 River-flow enhancement bonds; authorized; natural resources districts; powers and duties. (1) In order to implement its duties and obligations under the Nebraska Ground Water Management and Protection Act and in addition to other powers authorized by law, the board of a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may issue negotiable bonds and refunding bonds of the district and entitled river-flow enhancement bonds, with terms determined appropriate by the board, payable by (a) funds granted to such district by the state or federal government for one or more qualified projects, (b) the occupation tax authorized by section 2-3226.05, or (c) the levy authorized by section 2-3225. The district may issue the bonds or refunding bonds directly, or such bonds may be issued by any joint entity as defined in section 13-803 whose member public agencies consist only of qualified natural resources districts or by any joint public agency as defined in section 13-2503 whose participating public agencies consist only of qualified natural resources districts, in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts. For the payment of such bonds or refunding bonds, the district may pledge one or more permitted payment sources.

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

(3) Beginning on April 1, 2008, if a district uses the proceeds of a bond issued pursuant to this section for the purposes described in subdivision (1) of section 2-3226.04 or the state uses funds for those same purposes, such district shall restrict the use of ground water from water

wells used on acres certified for both ground water use and surface water use to no greater than the total ground water allocation previously permitted by district rule or regulation less any surface water purchased, leased, or otherwise acquired for implementation of the project entered into by the district.

Source: Laws 2007, LB701, § 6.
Effective date May 2, 2007.

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

2-3226.02 River-flow enhancement bonds; termination of authority; effect on existing bonds and refunding bonds. The authority to issue bonds for qualified projects granted in section 2-3226.01 terminates on January 1, 2023, 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 2-3226.01 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 January 1, 2023, including extension of principal maturities if determined appropriate.

Source: Laws 2007, LB701, § 7.
Effective date May 2, 2007.

2-3226.03 River-flow enhancement bonds; board issuing bonds; powers; terms and conditions. The board of a district issuing bonds pursuant to section 2-3226.01 may agree to pay fees to fiscal agents in connection with the placement of bonds of the district. Such bonds shall be subject to the same terms and conditions as provided by section 2-3254.07 for improvement project area bonds and such other terms and conditions as the board determines appropriate.

Source: Laws 2007, LB701, § 8.
Effective date May 2, 2007.

2-3226.04 River-flow enhancement bonds; use of proceeds. The proceeds of bonds issued pursuant to section 2-3226.01 shall only be used to pay or refinance the costs of (1) acquisition by purchase or lease of water rights in accordance with Chapter 46, article 6, pertaining to ground water, and Chapter 46, article 2, pertaining to surface water, including storage water rights with respect to a river or any of its tributaries, (2) acquisition by purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries, (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries, and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, article 32.

Source: Laws 2007, LB701, § 9.
Effective date May 2, 2007.

2-3226.05 River-flow enhancement bonds; occupation tax authorized; collection; accounting; lien; foreclosure. (1) The district may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, for the purpose of repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04.

(2) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless, on or before July 1, 2007, and on or before March 1 in each subsequent year, the record owner certifies to the district the nonirrigation status of such acres.

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

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time as general real property taxes.

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

Source: Laws 2007, LB701, § 10.
Effective date May 2, 2007.

2-3231 Districts; contracts; powers. Each district shall have the power and authority to:

(1) Contract for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, drains, drainage systems, or other projects for a purpose mentioned in section 2-3229, and necessary works incident thereto, and to hold the federal government or any agency thereof free from liability arising from any construction;

(2) Contract with the United States for a water supply and water distribution and drainage systems under any Act of Congress providing for or permitting such contract;

(3) Acquire by purchase, lease, or otherwise mutually arrange to administer and manage any project works undertaken by the United States or any of its agencies, or by this state or any of its agencies; except that this section shall not apply to any project being administered or managed by any public power district, public power and irrigation district, or metropolitan utilities district; and

(4) Act as agent of the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance, or management of any project within its boundaries.

Source: Laws 1969, c. 9, § 31, p. 120; Laws 2007, LB701, § 12.
Effective date May 2, 2007.

2-3254 Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien. (1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Health and Human

Services, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to

benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB296, § 18. Operative date July 1, 2007.

Cross Reference

Nebraska Safe Drinking Water Act, see section 71-5313.

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 (12) 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.
Effective date May 2, 2007.

ARTICLE 39

MILK

(a) NEBRASKA PASTEURIZED MILK LAW

Section.

2-3901. Transferred to section 2-3965.
2-3902. Transferred to section 2-3967.
2-3903. Transferred to section 2-3969.
2-3904. Transferred to section 2-3970.
2-3905. Repealed. Laws 2007, LB 111, § 31.
2-3906. Transferred to section 2-3971.
2-3907. Transferred to section 2-3972.
2-3908. Transferred to section 2-3973.
2-3909. Transferred to section 2-3974.
2-3910. Transferred to section 2-3975.

2-3911. Transferred to section 2-3976.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913. Transferred to section 2-3978.
2-3914. Transferred to section 2-3966.
2-3915. Transferred to section 2-3979.
2-3916. Transferred to section 2-3980.
2-3917. Transferred to section 2-3981.
2-3917.01. Transferred to section 2-3982.
2-3917.02. Repealed. Laws 2007, LB 111, § 31.
2-3918. Repealed. Laws 2007, LB 111, § 31.
2-3919. Transferred to section 2-3983.
2-3920. Transferred to section 2-3984.
2-3921. Transferred to section 2-3985.
2-3922. Transferred to section 2-3986.
2-3923. Transferred to section 2-3987.
2-3924. Transferred to section 2-3988.
2-3925. Transferred to section 2-3989.
2-3926. Repealed. Laws 2007, LB 111, § 31.
2-3927. Repealed. Laws 2007, LB 111, § 31.
2-3928. Repealed. Laws 2007, LB 111, § 31.
2-3929. Repealed. Laws 2007, LB 111, § 31.
2-3930. Repealed. Laws 2007, LB 111, § 31.
2-3931. Repealed. Laws 2007, LB 111, § 31.
2-3932. Repealed. Laws 2007, LB 111, § 31.
2-3934. Repealed. Laws 2007, LB 111, § 31.
2-3935. Transferred to section 2-3990.
2-3936. Repealed. Laws 2007, LB 111, § 31.
2-3937. Transferred to section 2-3991.
2-3937.01. Repealed. Laws 2007, LB 111, § 31.
2-3938. Repealed. Laws 2007, LB 111, § 31.
2-3939. Repealed. Laws 2007, LB 111, § 31.
2-3940. Repealed. Laws 2007, LB 111, § 31.
2-3941. Repealed. Laws 2007, LB 111, § 31.
2-3942. Transferred to section 2-3992.
2-3943. Repealed. Laws 2007, LB 111, § 31.
2-3944. Repealed. Laws 2007, LB 111, § 31.
2-3945. Repealed. Laws 2007, LB 111, § 31.
2-3946. Repealed. Laws 2007, LB 111, § 31.

(d) NEBRASKA MILK ACT

2-3965. Act, how cited; provisions adopted by reference; copies.
2-3966. Terms, defined.

(a) NEBRASKA PASTEURIZED MILK LAW

2-3901 Transferred to section 2-3965.

2-3902 Transferred to section 2-3967.

2-3903 Transferred to section 2-3969.

2-3904 Transferred to section 2-3970.

2-3905 Repealed. Laws 2007, LB 111, § 31.

2-3906 Transferred to section 2-3971.

2-3907 Transferred to section 2-3972.

2-3908 Transferred to section 2-3973.

2-3909 Transferred to section 2-3974.

2-3910 Transferred to section 2-3975.

2-3911 Transferred to section 2-3976.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913 Transferred to section 2-3978.

2-3914 Transferred to section 2-3966.

2-3915 Transferred to section 2-3979.

2-3916 Transferred to section 2-3980.

2-3917 Transferred to section 2-3981.

2-3917.01 Transferred to section 2-3982.

2-3917.02 Repealed. Laws 2007, LB 111, § 31.

2-3918 Repealed. Laws 2007, LB 111, § 31.

Note: This section was amended by Laws 2007, LB 110, section 18, and repealed by Laws 2007, LB 111, section 31. The repeal became effective on September 1, 2007, and the section has been deleted.

2-3919 Transferred to section 2-3983.

2-3920 Transferred to section 2-3984.

2-3921 Transferred to section 2-3985.

2-3922 Transferred to section 2-3986.

2-3923 Transferred to section 2-3987.

2-3924 Transferred to section 2-3988.

2-3925 Transferred to section 2-3989.

2-3926 Repealed. Laws 2007, LB 111, § 31.

2-3927 Repealed. Laws 2007, LB 111, § 31.

2-3928 Repealed. Laws 2007, LB 111, § 31.

Note: This section was amended by Laws 2007, LB 296, section 20, and repealed by Laws 2007, LB 111, section 31. The repeal became effective on September 1, 2007, and the section has been deleted.

2-3929 Repealed. Laws 2007, LB 111, § 31.

2-3930 Repealed. Laws 2007, LB 111, § 31.

2-3931 Repealed. Laws 2007, LB 111, § 31.

2-3932 Repealed. Laws 2007, LB 111, § 31.

Note: This section was amended by Laws 2007, LB 296, section 21, and repealed by Laws 2007, LB 111, section 31. The repeal became effective on September 1, 2007, and the section has been deleted.

2-3934 Repealed. Laws 2007, LB 111, § 31.

2-3935 Transferred to section 2-3990.

2-3936 Repealed. Laws 2007, LB 111, § 31.

2-3937 Transferred to section 2-3991.

2-3937.01 Repealed. Laws 2007, LB 111, § 31.

2-3938 Repealed. Laws 2007, LB 111, § 31.

2-3939 Repealed. Laws 2007, LB 111, § 31.

2-3940 Repealed. Laws 2007, LB 111, § 31.

2-3941 Repealed. Laws 2007, LB 111, § 31.

2-3942 Transferred to section 2-3992.

2-3943 Repealed. Laws 2007, LB 111, § 31.

2-3944 Repealed. Laws 2007, LB 111, § 31.

2-3945 Repealed. Laws 2007, LB 111, § 31.

2-3946 Repealed. Laws 2007, LB 111, § 31.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies. (1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2005 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Supplies, 2005 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2005 Revision; and

(d) Evaluation of Milk Laboratories, 2005 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2005 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted; and

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined. For purposes of the Nebraska Milk Act, unless the context otherwise requires:

(1) 3-A sanitary standards means the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and

Environmental Sanitarians, the United States Department of Health and Human Services, and the Dairy Industry Committee and published by the International Association of Milk, Food and Environmental Sanitarians in effect on July 1, 2001;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk by-product;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

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

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(10) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(11) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2.
Effective date September 1, 2007.

2-3967 Activities regulated. The Nebraska Milk Act shall be used for the regulation of: (1) The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products; (2) the inspection of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers, and milk distributors; and (3) the issuance, suspension, and revocation of permits.

Source: Laws 1980, LB 632, § 2; Laws 1986, LB 900, § 2; Laws 1990, LB 856, § 3; Laws 1997, LB 201, § 2; Laws 2001, LB 198, § 2; R.S.Supp.,2006, § 2-3902; Laws 2007, LB111, § 3.
Effective date September 1, 2007.

2-3968 Grade A milk producer permit; manufacturing grade milk producer permit; label restrictions. (1) A milk producer shall receive a Grade A milk producer

permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for Grade A milk or milk products.

(2) A milk producer shall receive a manufacturing grade milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for manufacturing grade milk or dairy products.

(3) Dairy products made from milk for manufacturing purposes shall not be labeled with the Grade A designation.

Source: Laws 2007, LB111, § 4.
Effective date September 1, 2007.

2-3969 Sale of milk and milk products; conditions. (1) Except as provided in subsections (2) and (3) of this section, only milk and milk products from approved sources with an appropriate permit issued by the department or a similar regulatory authority of another state shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments.

(2) In an emergency, the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be authorized by the regulatory agency, in which case such milk and milk products shall be labeled as ungraded.

(3) Milk and cream produced by farmers exclusively for sale at the farm directly to customers for consumption and not for resale shall be exempt from the Nebraska Milk Act.

(4) If the permit of a Grade A milk producer is suspended for sanitary or milk quality violations, the producer may market milk, for manufacturing purposes only, for an interim period not to exceed sixty days with the approval of the department, if the milk meets the criteria of manufacturing grade milk.

Source: Laws 1980, LB 632, § 3; Laws 1986, LB 900, § 3; Laws 1997, LB 201, § 3; R.S.1943, (1997), § 2-3903; Laws 2007, LB111, § 5.
Effective date September 1, 2007.

2-3970 Act; administration and enforcement. The Nebraska Milk Act shall be administered and enforced by the department.

Source: Laws 1980, LB 632, § 4; Laws 1986, LB 900, § 4; R.S.1943, (1997), § 2-3904; Laws 2007, LB111, § 6.
Effective date September 1, 2007.

2-3971 Permit fees; inspection fees; other fees; rate. (1) Until July 31, 2008, as a condition precedent to the issuance of a permit issued pursuant to the Nebraska Milk Act, on or before August 1 of each year, the following described annual permit fees shall be paid to the department:

Milk Plant $100.00
Receiving Station 100.00
Plant Fabricating Single-Service Articles .. 100.00
Milk Distributor 75.00
Transfer Station 50.00

Milk Tank Truck Cleaning Facility 50.00
Milk Transportation Company 25.00
Milk Hauler 25.00
Milk Producer ..... No Fee
Milk Tank Truck .....No Fee

(2) If the applicant is an individual, the application for a permit shall include the applicant's social security number.

(3) Until September 30, 2007, all raw milk produced on farms or pasteurized in plants holding permits issued under the act shall be subject to the payment of inspection fees as prescribed in subsections (4) through (7) of this section. All fees shall be paid on or before the fifteenth of the month for milk produced or processed during the preceding month. Inspection fees for milk pasteurized outside of Nebraska shall be paid by the person shipping such raw milk outside the state. Inspection fees for milk pasteurized within Nebraska shall be paid by the plant pasteurizing such raw milk.

(4) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three cents per hundredweight of raw milk pasteurized.

(5) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a manufacturing milk plant shall be two and one-half cents per hundredweight of raw milk pasteurized in Nebraska, or per hundredweight of raw milk shipped from Nebraska, as appropriate.

(6) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a plant located outside of Nebraska shall be two and one-half cents per hundredweight of raw milk shipped from Nebraska.

(7) The inspection fee on raw milk produced on a Grade A farm not holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three-fourths of one cent per hundredweight of raw milk pasteurized.

(8)(a) Beginning August 1, 2008, as a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

(i) Milk Plant processing 100,000 or less pounds per month...$100.00;
(ii) Milk Plant processing 100,001 to 2,000,000 pounds per month...$500.00;
(iii) Milk Plant processing more than 2,000,000 pounds per month...$1,000.00;
(iv) Receiving Station.....$200.00;
(v) Plant Fabricating Single-Service Articles..$300.00;
(vi) Milk Distributor.....$150.00;
(vii) Transfer Station.....$100.00;
(viii) Milk Tank Truck Cleaning Facility.....$100.00;
(ix) Bulk Milk Hauler/Sampler.....$25.00;
(x) Field Representative.....$25.00; and

(xi) Milk Producer.....No Fee.

(b) Beginning August 1, 2008, and on or before each August 1 thereafter a Milk Transportation Company shall pay twenty-five dollars for each truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(9)(a) Beginning October 1, 2007, all milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the fifteenth of the month for milk or components of milk produced or processed during the preceding month.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(10) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7.
Effective date September 1, 2007.

2-3972 Adulteration or misbranding; stop-sale, stop-use, or removal order; issuance; hearing. Whenever a regulatory agency finds milk or milk products being manufactured, processed, transported, distributed, offered for sale, or sold, in violation of the adulteration or misbranding provisions of the Nebraska Milk Act, it shall have the authority to issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such milk or milk product only if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. Such an order shall specifically describe the nature of the violation found and the precise action necessary to bring the milk or milk products into compliance with the applicable provisions of the act. Such an order shall

clearly advise the person in charge of the milk or milk products that he or she may request an immediate hearing before the director or his or her designee on the matter. The issuance of orders under this section shall be limited to instances in which no alternative course of action would sufficiently protect the public health, safety, or welfare.

Source: Laws 1980, LB 632, § 7; Laws 2001, LB 198, § 4; R.S.Supp.,2006, § 2-3907; Laws 2007, LB111, § 8.
Effective date September 1, 2007.

2-3973 Department; rules and regulations. The department may adopt and promulgate reasonable rules and regulations to carry out the Nebraska Milk Act.

Source: Laws 1980, LB 632, § 8; Laws 1986, LB 900, § 7; Laws 2001, LB 198, § 5; R.S.Supp.,2006, § 2-3908; Laws 2007, LB111, § 9.
Effective date September 1, 2007.

2-3974 Violation; restraining order or injunction; prohibited acts; penalty; county attorney; duties. (1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Milk Act or the rules and regulations adopted and promulgated pursuant to the act in order to insure compliance with the provisions thereof. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of other remedies at law and shall be granted without bond.

(2) Any person violating the act or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director in the performance of his or her duties in connection with the enforcement of the act or the rules and regulations adopted and promulgated by the department is guilty of a Class V misdemeanor.

(3) It shall be the duty of the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

Source: Laws 1980, LB 632, § 9; Laws 1986, LB 900, § 8; R.S.1943, (1997), § 2-3909; Laws 2007, LB111, § 10.
Effective date September 1, 2007.

2-3975 Director; surveys of milksheds; make and publish results. The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health

and Human Services in its documents entitled Methods of Making Sanitation Ratings of Milk Supplies, 2005 Revision, and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 2005 Revision.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment. All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the Manufacturing Milk Cash Fund on September 1, 2007, shall be transferred to the Pure Milk Cash Fund on such date.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12.
Effective date September 1, 2007.

Cross Reference

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

2-3977 Field representative; powers; field representative permit; applicant; qualifications. (1) Beginning August 1, 2008, milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13.
Effective date September 1, 2007.

2-3978 Public policy. It is hereby recognized and declared as a matter of legislative determination that in the field of human nutrition, safe, clean, wholesome milk is indispensable to the health and welfare of the citizens of the State of Nebraska; that milk is a perishable commodity susceptible to contamination and adulteration; that the production and distribution of an adequate supply of clean, safe, and wholesome milk are significant to sound health; and that minimum standards are declared to be necessary for the production and distribution of milk and milk products.

Source: Laws 1969, c. 5, § 2, p. 69; R.S.1943, (1976), § 81-263.88; Laws 1980, LB 632, § 13; R.S.1943, (1997), § 2-3913; Laws 2007, LB111, § 14.
Effective date September 1, 2007.

2-3979 Classification of raw milk. The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for somatic cells, bacterial content, sediment content, and drug residues. Classification shall be either acceptable, probational, or reject.

Source: Laws 1969, c. 5, § 4, p. 72; R.S.1943, (1976), § 81-263.90; Laws 1980, LB 632, § 15; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 13; Laws 1993, LB 268, § 2; Laws 2001, LB 198, § 8; R.S.Supp.,2006, § 2-3915; Laws 2007, LB111, § 15.
Effective date September 1, 2007.

2-3980 Flavor and odor of acceptable raw milk for manufacturing purposes. The odor of acceptable raw milk for manufacturing purposes shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished product, and it shall not show any abnormal condition, including, but not limited to, curdled, ropy, bloody, or mastitic condition, as indicated by sight or odor.

Source: Laws 1969, c. 5, § 5, p. 72; R.S.1943, (1976), § 81-263.91; Laws 1980, LB 632, § 16; R.S.1943, (1997), § 2-3916; Laws 2007, LB111, § 16.
Effective date September 1, 2007.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards. (1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subdivision (1) of this

section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance, 2005 Revision, relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance, 2005 Revision.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17.
Effective date September 1, 2007.

2-3982 Classification for sediment content; sediment standards; determination; effect. (1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2006.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18.
Effective date September 1, 2007.

2-3983 Milking facility requirements. A milking facility producing milk for manufacturing purposes of adequate size and arrangement shall be provided to permit normal sanitary milking operations. Such milking facility shall be physically separated by solid partitions or doors from other parts of the barn or building which do not meet the requirements of this section. A milking facility shall meet the following requirements:

(1) Sufficient space shall be provided for each dairy animal during the milking operation. If housed in the same area, the individual dairy animal should be able to lie down comfortably without being substantially in the gutter or alley. There shall not be overcrowding of the dairy animals;

(2) Maternity pens and calf, kid, and lamb pens, if provided, shall be properly maintained and cleaned regularly;

(3) Walls and ceilings shall be of solid and tight construction and in good repair;

(4) Only dairy animals shall be permitted in any part of the milking facility;

(5) The floors and gutters of the milking facility shall be constructed of concrete or other impervious material, graded to drain, and in good repair;

(6) The milking facility shall be well lighted and well ventilated to accommodate day or night milking;

(7) The milking facility shall be kept clean with walls and ceilings kept free of filth, cobwebs, and manure. The floor shall be scraped or washed after each milking and the manure stored to prevent access by dairy animals;

(8) Only articles directly related to the normal milking operation may be stored in the milking facility; and

(9) Feed storage rooms and silo areas shall be partitioned from the milking facility.

Source: Laws 1969, c. 5, § 9, p. 75; R.S.1943, (1976), § 81-263.95; Laws 1980, LB 632, § 19; Laws 1986, LB 900, § 17; Laws 1993, LB 268, § 5; R.S.1943, (1997), § 2-3919; Laws 2007, LB111, § 19.
Effective date September 1, 2007.

2-3984 Yard or loafing area requirements. The yard or loafing area of a facility producing milk for manufacturing purposes shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean. Manure piles shall not be accessible to the dairy animals. Swine shall not be allowed in the yard or loafing area.

Source: Laws 1969, c. 5, § 10, p. 75; R.S.1943, (1976), § 81-263.96; Laws 1980, LB 632, § 20; Laws 1993, LB 268, § 6; R.S.1943, (1997), § 2-3920; Laws 2007, LB111, § 20.
Effective date September 1, 2007.

2-3985 Udders; teats of dairy animals; milk stools; antikickers; surcingles; drugs; requirements. All facilities producing milk for manufacturing purposes shall meet the following requirements:

(1) The udders and teats of all dairy animals shall be washed or wiped immediately before milking with a clean damp cloth or paper towel moistened with a sanitizing solution and wiped dry or by any other sanitary method. The milker's clothing shall be clean and his or her hands clean and dry. Dairy animals treated with drugs shall be milked last and the milk excluded from the supply for such period of time as is necessary to have the milk free from drug residues;

(2) Milk stools, antikickers, and surcingles shall be kept clean and properly stored. Dusty hay shall not be fed in the milking facility immediately before milking. Strong flavored feeds should not be fed before milking; and

(3) Drugs shall be stored in such manner that they cannot contaminate the milk or dairy products or milk contact areas. Unapproved or improperly labeled drugs shall not be used to treat dairy animals and shall not be stored in the barn or milking facility. Drugs intended for the treatment of nonlactating dairy animals shall be segregated from drugs used for lactating dairy animals. All drugs shall be properly labeled to include:

(a) The name and address of the manufacturer or distributor for drugs or veterinary practitioners dispensing the product for prescription and extra-labeling-use drugs;

(b) The established name of the active ingredient, or if formulated from more than one ingredient, the established name of each ingredient;

(c) Directions for use, including the class or species or identification of the animals, and the dosage, frequency, route of administration, and duration of therapy;

(d) Any cautionary statements; and

(e) The specified withdrawal or discard time for meat, milk, eggs, or any food which might be derived from the treated animal.

Source: Laws 1969, c. 5, § 11, p. 75; R.S.1943, (1976), § 81-263.97; Laws 1980, LB 632, § 21; Laws 1989, LB 38, § 3; Laws 1993, LB 268, § 7; R.S.1943, (1997), § 2-3921; Laws 2007, LB111, § 21. Effective date September 1, 2007.

2-3986 Milk in farm bulk tanks; cooled; temperature. Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A sanitary standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22. Effective date September 1, 2007.

2-3987 Milkhouse or milkroom; sanitation requirements. A milkhouse or milkroom at a facility producing milk for manufacturing purposes shall be conveniently located and properly constructed, lighted, and ventilated for handling and cooling milk in farm bulk tanks. The milkhouse or milkroom shall meet the following requirements:

(1) Adequate natural or artificial lighting shall be provided for conducting milkhouse or milkroom operations. Light fixtures shall not be installed directly above farm bulk milk tanks in areas where milk is drained or in areas where equipment is washed or stored. A minimum of thirty footcandles of light intensity shall be provided where the equipment is washed. All artificial lighting shall be from permanent fixtures;

(2) Adequate ventilation shall be provided to prevent odors and condensation on walls and ceilings;

(3) The milkhouse or milkroom shall be used for no other purpose;

(4) Adequate facilities for washing and storing milking equipment shall be provided in the milkhouse or milkroom. Only C-I-P equipment shall be stored in the milking area or milking parlor. Hot and cold running water under pressure shall be provided in the milkhouse or milkroom;

(5) If the milkhouse or milkroom is part of the milking facility or other building, it shall be partitioned and sealed to prevent the entrance of dust, flies, or other contamination. Walls, floors, and ceilings shall be kept clean and in good repair;

(6) Feed concentrates, if stored in the building, shall be kept in a tightly covered box or bin;

(7) The floor of the building shall be of concrete or other impervious material and graded to provide drainage;

(8) All doors in the milkhouse or milkroom shall be self-closing. Outer screen doors shall open outward and be maintained in good repair;

(9) No animals shall be allowed in the milkhouse or milkroom;

(10) A farm bulk tank shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator or a light fixture;

(11) A suitable hoseport opening shall be provided in the milkhouse or milkroom for hose connections and the hoseport shall be fitted with a tight-fitting door which shall be kept closed except when the port is in use. An easily cleanable surface shall be constructed under the hoseport adjacent to the outside wall large enough to protect the milkhose from contamination;

(12) The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading. It shall not pass through any livestock holding area;

(13) All windows, if designed to be opened, shall be adequately screened;

(14) Surroundings shall be neat, clean, and free of harborage and pooled water; and

(15) Handwashing facilities shall be provided which shall include soap, single-service towels, running water under pressure, a sink, and a covered refuse container.

Source: Laws 1969, c. 5, § 13, p. 75; R.S.1943, (1976), § 81-263.99; Laws 1980, LB 632, § 23; Laws 1981, LB 333, § 2; Laws 1986, LB 900, § 19; Laws 1989, LB 38, § 4; Laws 1993, LB 268, § 9; R.S.1943, (1997), § 2-3923; Laws 2007, LB111, § 23.
Effective date September 1, 2007.

2-3988 Milk utensils; sanitation requirements. At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A sanitary standards and comply with applicable rules and regulations of the department.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24.
Effective date September 1, 2007.

2-3989 Water supply requirements; testing. The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. On and after October 1, 1989, all new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws 1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 111, section 25, with LB 296, section 19, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 111 became effective September 1, 2007.

2-3990 Cream for buttermaking; pasteurization. Cream for buttermaking shall be pasteurized at a temperature of not less than one hundred sixty-five degrees Fahrenheit and held continuously in a vat at such temperature for not less than thirty minutes, or at a temperature of not less than one hundred eighty-five degrees Fahrenheit for not less than fifteen seconds, or any other temperature and holding time approved by the director that will assure pasteurization and comparable keeping-quality characteristics.

Source: Laws 1969, c. 5, § 24, p. 84; R.S.1943, (1976), § 81-263.110; Laws 1980, LB 632, § 35; Laws 1986, LB 900, § 26; Laws 1993, LB 268, § 18; R.S.1943, (1997), § 2-3935; Laws 2007, LB111, § 26.
Effective date September 1, 2007.

2-3991 Dairy products; packaging; containers; labeling. Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold, and other possible contamination.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer,

or distributor, and plant code number. Consumer-packaged products shall be legibly marked with the name of the product, net weight or content, plant code number, and name and address of the packer or distributor.

Source: Laws 1969, c. 5, § 28, p. 86; R.S.1943, (1976), § 81-263.114; Laws 1980, LB 632, § 37; Laws 1993, LB 268, § 19; R.S.1943, (1997), § 2-3937; Laws 2007, LB111, § 27.
Effective date September 1, 2007.

2-3992 Director; access to facilities, books, and records; inspections authorized. (1) The director or his or her duly authorized agent shall have access during regular business hours to any milking facility or dairy plant for which a permit is held in which milk is used or stored for use in the manufacture, processing, packaging, or storage of milk or milk products or to enter any vehicle being used to transport or hold such milk or milk products for the purpose of inspection and to secure specimens or samples of any milk or milk product after paying or offering to pay for such sample or specimen. The director may analyze and inspect samples of raw milk and dairy products.

(2) The director or his or her duly authorized agent shall have access during regular business hours to the books and records of any permitholder under the Nebraska Milk Act when such access is necessary to properly administer and enforce such act.

Source: Laws 1969, c. 5, § 33, p. 89; R.S.1943, (1976), § 81-263.119; Laws 1980, LB 632, § 42; Laws 1986, LB 900, § 31; Laws 1993, LB 268, § 24; R.S.1943, (1997), § 2-3942; Laws 2007, LB111, § 28.
Effective date September 1, 2007.

ARTICLE 48

FARM MEDIATION

Section.
2-4806. Fees.
2-4808. Mediation; request; participants.

2-4806 Fees. The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting. The administrator may adopt and promulgate rules and regulations that allow a separate fee schedule for mediation services that are not eligible for partial or full federal reimbursement.

Source: Laws 1988, LB 664, § 6; Laws 2007, LB108, § 1.
Effective date March 8, 2007.
Termination date June 30, 2009.

2-4808 Mediation; request; participants. (1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 34-112.02.

(2) The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of any party in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by any party.

Source: Laws 1988, LB 664, § 8; Laws 1997, LB 200, § 3; Laws 2007, LB108, § 2.
Effective date March 8, 2007.
Termination date June 30, 2009.

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, and the Nebraska Emergency Management Agency, Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska, Department of Agriculture, Department of Health and Human Services, Department of Natural Resources, and Governor's Policy Research Office. Representatives from the federal Farm Service Agency and Federal Crop Insurance Corporation may also serve on the committee at the invitation of the Governor. The Governor may appoint the chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature 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.
Operative date July 1, 2007.

ARTICLE 54

AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section.

2-5415 Terms, defined. For purposes of the Agricultural Opportunities and Value-Added Partnerships Act:

(1) Farming or ranching operation means the active use, management, and operation of real and personal property for the production of crops or raising of livestock;

(2) Project means any agricultural or value-added agricultural product activity in the areas specified in section 2-5419 designed to promote the purposes specified in section 2-5416. Project does not mean, and grant funds shall not be used for, any activity primarily designed to contribute to a single business, enterprise, or individual or designed to subsidize an existing farming or ranching operation;

(3) Specialty crop means fruits, vegetables, tree nuts, dried fruits, and nursery crops, including floriculture; and

(4) Value-added means increasing the net worth of food or nonfood agricultural products by processing, alternative production and handling methods, collective marketing, or other innovative practices.

Source: Laws 2005, LB 90, § 6; Laws 2007, LB69, § 1.
Effective date September 1, 2007.
Termination date January 1, 2011.

2-5416 Purposes of act. The purposes of the Agricultural Opportunities and Value-Added Partnerships Act are to:

(1) Support small enterprise formation in the agricultural sector of Nebraska's rural economy, including innovative cooperative efforts for value-added enterprises;

(2) Support the development of agricultural communities and economic opportunity through innovative partnerships among farming and ranching operations, rural communities, and businesses for the development of value-added agricultural products;

(3) Encourage collaboration between farming and ranching operations and between farming and ranching operations and communities, government, and businesses as well as between communities and regions;

(4) Strengthen the value-added production industry by promoting strategic partnerships and networks through multigroup cooperation for the creation of employment opportunities in the value-added agriculture industry;

(5) Enhance the income and opportunity for farming and ranching operations in Nebraska in order to stem the decline in their numbers;

(6) Increase the farming and ranching operations' share of the food-system profit;

(7) Enhance opportunities for farming and ranching operations to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities; and

(8) Encourage the production and marketing of specialty crops in Nebraska and to support the creation and development of agricultural enterprises and businesses that produce and market specialty crops in Nebraska.

Source: Laws 2005, LB 90, § 7; Laws 2007, LB69, § 2.
Effective date September 1, 2007.
Termination date January 1, 2011.

2-5418 Grants; eligible recipients. Eligible entities for grants under the Agricultural Opportunities and Value-Added Partnerships Act include communities, counties, agencies, educational institutions, economic development providers, nonprofit corporations, agricultural cooperatives, agricultural associations, agricultural marketing associations or entities, resource conservation organizations, development districts, and farming or ranching operations that meet the purposes specified in section 2-5416.

Source: Laws 2005, LB 90, § 9; Laws 2007, LB69, § 3.
Effective date September 1, 2007.
Termination date January 1, 2011.

ARTICLE 56

GRAPES

Section.

2-5601 Terms, defined. For purposes of sections 2-5601 to 2-5604:

(1) Commercial channels means the sale or delivery of grapes for any use, except grapes intended for ultimate consumption as table grapes, to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grapes or product produced from grapes;

(2) Delivered or delivery means receiving grapes for utilization or as a result of sale in the State of Nebraska but excludes receiving grapes for storage;

(3) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to grapes from a grower;

(4) Grower means any landowner personally engaged in growing grapes, a tenant of the landowner personally engaged in growing grapes, and both the owner and tenant jointly and includes a person, a partnership, a limited liability company, an association, a corporation, a cooperative, a trust, or any other business unit, device, or arrangement; and

(5) Table grapes means grapes intended for ultimate consumption as produce in fresh, unprocessed form and not intended for wine production, juice production, or drying.

Source: Laws 2007, LB441, § 2.
Effective date September 1, 2007.

2-5602 Excise tax; amount; payment. (1) Except as provided in subsection (2) of this section, an excise tax of one cent per pound is levied upon all grapes sold through commercial channels in Nebraska or delivered in Nebraska. The excise tax shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Grapes shall not be subject to the excise tax imposed by this section more than once.

(2) The excise tax imposed by this section shall not apply to the sale of grapes to the federal government for the ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such excise tax by the United States Constitution and the laws enacted pursuant thereto.

Source: Laws 2007, LB441, § 3.
Effective date September 1, 2007.

2-5603 Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer. (1) The first purchaser, at the time of settlement, shall deduct the excise tax imposed by section 2-5602. The excise tax shall be deducted whether the grapes are stored in this state or any other state. The first purchaser shall maintain the necessary records of the excise tax for each purchase or delivery of grapes on the settlement form or check stub showing payment to the grower for each purchase or delivery. Such records maintained by the first purchaser shall provide the following information:

(a) The name and address of the grower and seller;

(b) The date of the purchase or delivery;

(c) The number of pounds of grapes purchased; and

(d) The amount of excise taxes collected on each purchase or delivery.

Such records shall be open for inspection during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the Department of Agriculture by the last day of January and July of each year, on forms prescribed by the department, a statement of the number of pounds of grapes purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the department the excise tax imposed by section 2-5602.

(3) All excise taxes collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund. The department shall remit the excise tax collected to the State Treasurer within ten days after receipt.

Source: Laws 2007, LB441, § 4.
Effective date September 1, 2007.

2-5604 Department of Agriculture; calculate costs; report. For each fiscal year beginning with FY2007-08, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 2-5602 and shall report such costs to the Department of Administrative Services within thirty days after the end of the calendar quarter. Sufficient funds to cover such costs shall be transferred from the Winery and Grape Producers Promotional Fund to the Management Services Expense Revolving Fund at the end of each calendar quarter. Funds shall be transferred upon the receipt by the Department of Administrative Services of a report of costs incurred by the Department of Agriculture for the previous calendar quarter.

Source: Laws 2007, LB441, § 5.
Effective date September 1, 2007.

2-5605 Violation; penalty. Any person violating sections 2-5601 to 2-5603 shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB441, § 6.
Effective date September 1, 2007.

CHAPTER 8
BANKS AND BANKING

Article.

ARTICLE 1

GENERAL PROVISIONS

Section.

8-108 Director of Banking and Finance; financial institution examination; powers; procedure; charge. The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing

such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made. The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The director may provide any such examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The department shall have power to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191, § 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1.
Operative date September 1, 2007.

8-113 Unauthorized use of word bank or its derivatives; penalty. 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. This section does not apply to: (1) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) 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; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) 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 (c) 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; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) 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, (c) 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 (d) any combination of entities listed in subdivisions (a) through (c)

of this subdivision; (5) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (6) 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; (7) 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; and (8) 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. 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.
Operative date September 1, 2007.

Cross Reference

Mortgage Bankers Registration and Licensing Act, see section 45-701.

8-124 Banks; board of directors; officers; term; meetings; examination; audit. The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five percent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five percent or more voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall appoint a secretary and, from among its own members, select a president. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Source: Laws 1909, c. 10, § 26, p. 78; Laws 1911, c. 8, § 26, p. 81; R.S.1913, § 305; Laws 1919, c. 190, tit. V, art. XVI, § 26, p. 696; C.S.1922, § 8007; C.S.1929, § 8-138; R.S.1943, § 8-140; Laws 1961, c. 15, § 4, p. 112; R.R.S.1943, § 8-140; Laws 1963, c. 29, § 24, p. 143; Laws 1967, c. 21, § 1, p. 123; Laws 1973, LB 164, § 9; Laws 1974, LB 721, § 2; Laws 1987, LB 2, § 6; Laws 1998, LB 1321, § 6; Laws 2005, LB 533, § 5; Laws 2007, LB124, § 3.
Operative date March 20, 2007.

8-148.04 Community development investments; conditions. (1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does not exceed fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the department must be obtained.

(2) Nothing in this section shall prevent a bank from charging off as a contribution an investment made pursuant to subsection (1) of this section.

(3) Such subscription, investment, possession, or ownership shall not be subject to sections 8-148, 8-149, and 8-150.

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Source: Laws 1993, LB 81, § 6; Laws 1994, LB 979, § 4; Laws 1996, LB 1184, § 1; Laws 2006, LB 876, § 9; Laws 2007, LB124, § 4.
Operative date March 20, 2007.

8-149 Banks; investment in bank premises or holding corporations; loans upon security of stock of holding corporation; written approval of Director of Banking and Finance required; when. (1) No bank shall, without the written approval of the director, (a) invest in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or (b) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans will exceed the paid-up capital stock, surplus, and capital notes and debentures of such bank. Stock held as authorized by this section shall not be subject to the provisions of section 8-148.

(2) Investments by a bank in bank premises necessary for the transaction of its business shall include, but not be limited to:

(a) Premises that are owned and occupied, or to be occupied if under construction, by the bank, its branches, or its consolidated subsidiaries;

(b) Real estate acquired and intended, in good faith, for use in future expansions;

(c) Parking facilities that are used by customers or employees of the bank, its branches, or its consolidated subsidiaries;

(d) Residential property for the use of officers or employees of the bank, its branches, or its consolidated subsidiaries who are:

(i) Located in areas where suitable housing at a reasonable price is not readily available; or

(ii) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(e) Property for the use of officers, employees, or customers of the bank, its branches, and its consolidated subsidiaries or for the temporary lodging of such persons in areas where suitable

commercial lodging is not readily available, if the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

Source: Laws 1963, c. 29, § 49, p. 155; Laws 1973, LB 164, § 15; Laws 1997, LB 137, § 5; Laws 2007, LB124, § 5.
Operative date March 20, 2007.

8-1,123 Repealed. Laws 2007, LB 124, § 77.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception. Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, 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.
Operative date March 20, 2007.

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. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, 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. Operative date March 20, 2007.

ARTICLE 6

ASSESSMENTS AND FEES

Section.

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized. The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of Chapter 8, articles 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp.,1941, § 8-701; R.S.1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8. Operative date September 1, 2007.

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 a photostatic copy of instruments, documents, or any other departmental records and for providing a computer-generated document, one dollar and fifty cents per page;

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

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

(9) 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;

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

(11) 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;

(12) 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;

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

(14) 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;

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

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

(17) 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;

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

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

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

(21) 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.
Operative date September 1, 2007.

Cross Reference

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

8-603 Assessments, fees, and money collected by Director of Banking and Finance; use. The assessments referred to in sections 8-605 and 8-606, examination fees, investigation fees, filing fees, registration fees, licensing fees, and all other fees and money, except fines, collected by or paid to the Director of Banking and Finance under any of the laws specified in section 8-601, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Source: Laws 2007, LB124, § 10.
Operative date September 1, 2007.

8-604 Financial Institution Assessment Cash Fund; created; use; investment. (1) The Financial Institution Assessment Cash Fund is hereby created. The fund shall be used solely for the purposes of administering and enforcing the laws specified in section 8-601.

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

Source: Laws 2007, LB124, § 11.
Operative date September 1, 2007.

Cross Reference

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

8-605 Director of Banking and Finance; assessment; proration; special assessment. (1) As soon as reasonably possible after June 30 of each year, the Director of Banking and Finance shall estimate the total sum required for the purposes set forth in section 8-604 for the succeeding fiscal year. The director shall also estimate the total sum expected to be collected pursuant to section 8-603. The director shall use the difference between the estimate of the total sum required and the estimate of the total sum to be collected as the basis for the assessment to be levied.

(2) The assessment upon each financial institution shall be based upon the total assets of each financial institution, as reported in each financial institution's report of condition prepared for the period ending June 30 of each year, and, after June 30, 2009, may further be based upon the total amount of fiduciary and related assets and the total amount of off-balance-sheet receivables as reported in each financial institution's report of condition prepared for the period ending June 30 of each year.

(3) The director shall have the authority to prorate the assessment for any financial institution or entity which surrenders its charter or license or receives its charter or license during the assessment period. Proration shall be based on the number of months the financial institution held its charter or license. Any portion of a month shall be counted as one month.

(4) If the estimated sum levied and collected is insufficient to defray the expenditures for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

Source: Laws 2007, LB124, § 12.
Operative date September 1, 2007.

8-606 Department of Banking and Finance; costs of examination of financial institution or entity; billing; travel costs. (1) As soon as reasonably possible following the examination of a financial institution or entity pursuant to the laws specified in section 8-601, the Department of Banking and Finance shall bill the financial institution or entity the costs of the examination. Such costs may include an hourly fee for examiner time, which shall be determined once each year by the Director of Banking and Finance, with the approval of the Governor, and which shall take into consideration whether the financial institution or entity is subject to the assessment.

(2) In case an extra examination or an investigation of any financial institution or entity becomes necessary and is made pursuant to the laws specified in section 8-601, the costs thereof shall be paid by the financial institution or entity examined or investigated.

(3) In the case of a financial institution or entity organized under the law of a state other than this state or a financial institution or entity organized under the law of this state but which maintains an office in another state or states, travel expenses involved in conducting an examination or investigation may also be billed to the financial institution or entity, if the examination or investigation involves travel outside this state.

Source: Laws 2007, LB124, § 13.
Operative date September 1, 2007.

8-607 Failure to pay assessment, fee, or cost; Department of Banking and Finance; collection procedures; suspension or revocation of charter or license. (1) If a financial institution or entity fails to pay an annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, or travel expense by a date specified by the Department of Banking and Finance, which shall be not less than thirty days from the date of billing, the department may, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, impose a fine in accordance with section 8-1,134 for each day the financial institution or entity is in arrears.

(2) If the financial institution or entity is in arrears for sixty days or more, the department may, in addition to any fine imposed under this section, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, suspend or revoke the charter or license of any financial institution or entity or the license or authority of any person responsible for such failure.

(3) The Director of Banking and Finance may, in his or her discretion and for good cause shown, permit the payment of any annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, travel expense, or fine, in installments.

Source: Laws 2007, LB124, § 14.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 9

BANK HOLDING COMPANIES

Section.
8-915. Examinations; costs; reports in lieu of examination; director; powers.

8-915 Examinations; costs; reports in lieu of examination; director; powers. The director may make examinations of any bank holding company with one or more

state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15.
Operative date September 1, 2007.

ARTICLE 19

NAMES

Section.
8-1901. Terms, defined.

8-1901 Terms, defined. For purposes of sections 8-1901 to 8-1903, unless the context otherwise requires:

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

(2) Financial institution means:

(a) A state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, credit union, or trust company;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Source: Laws 1995, LB 384, § 6; Laws 2003, LB 131, § 17; Laws 2007, LB124, § 16.
Operative date September 1, 2007.

ARTICLE 21

INTERSTATE BRANCHING BY MERGER ACT OF 1997

Section.
8-2107. Director; powers and duties; costs.

8-2107 Director; powers and duties; costs. (1) The director may make such examinations of any branch established and maintained in this state by an out-of-state state chartered bank as the director may deem necessary to determine whether the branch is being

operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(2) The director may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Nebraska pursuant to the Interstate Branching By Merger Act of 1997. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Nebraska state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in a host state, and the director may accept such reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(4) The director may enter into contracts with any bank supervisory agencies that have concurrent jurisdiction over a Nebraska state chartered bank or an out-of-state state chartered bank operating a branch in this state to engage the services of such agencies' examiners or to provide the services of department examiners to such agency.

(5) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with the laws of this state. In the case of an out-of-state state chartered bank, the director shall recognize the exclusive authority of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(6) The cost of any examination conducted under this section shall be assessed against such out-of-state state chartered bank in the manner set forth in sections 8-605 and 8-606 and paid for by such out-of-state state chartered bank.

Source: Laws 1997, LB 351, § 7; Laws 2007, LB124, § 17.
Operative date September 1, 2007.

ARTICLE 23

INTERSTATE TRUST COMPANY OFFICE ACT

Section.
8-2312. Branch trust office; representative trust office; director; powers.

8-2312 Branch trust office; representative trust office; director; powers. (1) The director may examine any branch trust office or representative trust office established and maintained in this state by any out-of-state state trust company as he or she deems necessary to determine whether the branch trust office or representative trust office is being operated in compliance with Nebraska law and in accordance with safe and sound practices.

(2) The director may prescribe requirements for periodic reports by an out-of-state trust company that operates branch trust offices or representative trust offices pursuant to the Interstate Trust Company Office Act. Any such reporting requirements shall be consistent with the reporting requirements applicable to Nebraska trust companies and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust company supervisory agency that has concurrent jurisdiction over a Nebraska state-chartered trust company or an out-of-state state trust company operating a branch trust office or representative trust office in this state to engage the services of such supervisory agency's examiners or to provide the services of department examiners to such supervisory agency.

(4) The director may enter into joint examinations or joint enforcement actions with other trust company supervisory agencies having concurrent jurisdiction over any branch trust office or representative trust office of an out-of-state state trust company or any branch trust office or representative trust office of a Nebraska state-chartered trust company in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with Nebraska law. In the case of an out-of-state state trust company, the director shall recognize the exclusive jurisdiction of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) The cost of any examination conducted under this section shall be assessed against the out-of-state state trust company in the manner set forth in sections 8-605 and 8-606 and paid for by the out-of-state state trust company.

Source: Laws 1998, LB 1321, § 65; Laws 2007, LB124, § 18.
Operative date September 1, 2007.

ARTICLE 25

SOLICITATION FOR FINANCIAL PRODUCTS OR SERVICES

Section.
8-2504. Violation; cease and desist order; fine.

8-2504 Violation; cease and desist order; fine. (1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 8-2501 or 8-2502. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order

has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 8-2501 or 8-2502 after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to one thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 8-2501 or 8-2502 takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund.

(4) This section does not affect the availability of any remedies otherwise available to a financial institution.

Source: Laws 2005, LB 533, § 28; Laws 2007, LB124, § 19.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 26

CREDIT REPORT PROTECTION ACT

Section.

8-2601 Act, how cited. Sections 8-2601 to 8-2615 shall be known and may be cited as the Credit Report Protection Act.

Source: Laws 2007, LB674, § 1.
Operative date September 1, 2007.

Cross Reference

Consumer reporting agency, duty to furnish information to consumer, see section 20-149.

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) 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

(4) 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.
Operative date September 1, 2007.

8-2603 Security freeze; request. A consumer, including a minor at the request of a parent or custodial parent or guardian if appointed, may elect to place a security freeze on his or her file by making a request by certified mail to the consumer reporting agency.

Source: Laws 2007, LB674, § 3.
Operative date September 1, 2007.

8-2604 Consumer reporting agency; release of credit report or other information prohibited without consumer authorization. If a security freeze is in place with respect to a consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's file.

Source: Laws 2007, LB674, § 4.
Operative date September 1, 2007.

8-2605 Consumer reporting agency; placement of security freeze; when; written confirmation to consumer. (1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request by certified mail.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of a credit report or any other information derived from his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Source: Laws 2007, LB674, § 5.
Operative date September 1, 2007.

8-2606 Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when. (1) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to provide sufficiently self-identifying information may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 8-2605; and

(c) The proper information regarding the specified time period.

(3)(a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to

temporarily lift a security freeze on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Source: Laws 2007, LB674, § 6.
Operative date September 1, 2007.

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 earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608 or seven years after the date the security freeze was put in place.

(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 earlier of the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608 or seven years after the date the security freeze was put in place.

Source: Laws 2007, LB674, § 7.
Operative date September 1, 2007.

8-2608 Consumer reporting agency; mandatory removal of security freeze; conditions. A consumer reporting agency shall remove a security freeze within three business days after receiving a request for removal from the consumer who provides both of the following:

(1) Proper identification as specified in subdivision (2)(a) of section 8-2606; and

(2) The unique personal identification number or password referred to in subdivision (2)(b) of section 8-2606.

Source: Laws 2007, LB674, § 8.
Operative date September 1, 2007.

8-2609 Consumer reporting agency; fee authorized; exceptions. (1) A consumer reporting agency may charge a fee of fifteen dollars for placing 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.
Operative date September 1, 2007.

8-2610 Consumer reporting agency; changes to official information in file; written confirmation to consumer required; exceptions. If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Source: Laws 2007, LB674, § 10.
Operative date September 1, 2007.

8-2611 Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated. (1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Source: Laws 2007, LB674, § 11.
Operative date September 1, 2007.

8-2612 Consumer reporting agency; information furnished to governmental agency. The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, place of employment, or former place of employment.

Source: Laws 2007, LB674, § 12.
Operative date September 1, 2007.

8-2613 Act; use of credit report or information derived from file; applicability. The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 8-2606 for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on September 1, 2007;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report or any other information derived from his or her file upon the consumer's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Source: Laws 2007, LB674, § 13.
Operative date September 1, 2007.

8-2614 Entities not considered consumer reporting agencies; not required to place security freeze on file. The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze on a file under section 8-2603:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; and

(3) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency, or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Source: Laws 2007, LB674, § 14.
Operative date September 1, 2007.

8-2615 Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages. The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer injured by a violation of the act.

Source: Laws 2007, LB674, § 15.
Operative date September 1, 2007.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.

ARTICLE 1

GENERAL PROVISIONS

Section.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized. (1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and section 81-8,128. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer fifty thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than fifty thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1.
Effective date September 1, 2007.

Cross Reference

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

ARTICLE 2

BINGO

Section.

9-266. Reports and records; disclosure; limitations; violation; penalty.

9-232.01 License; application; contents; restrictions on conduct of bingo; gaming manager license; fee; utilization-of-funds member; license. (1) Each organization applying for a license to conduct bingo shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant organization;

(b) Sufficient facts relating to the incorporation or organization of the applicant organization to enable the department to determine if the organization is eligible for a license pursuant to section 9-231;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, years of membership, and date of birth of one bona fide and active member of the organization who will serve as the organization's bingo chairperson; and

(e) The name, address, social security number, years of membership, and date of birth of no more than three bona fide and active members of the organization who will serve as alternate bingo chairpersons.

(2) In addition, each applicant organization shall include with the application:

(a) The name, address, social security number, date of birth, and years of membership of an active and bona fide member of the applicant organization to be licensed as the utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. All utilization-of-funds members shall sign a sworn statement indicating that they agree to comply with all provisions of the Nebraska Bingo Act and all rules and regulations adopted pursuant to the act, that they will insure that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization, except payments authorized by the act, and that all profits will be spent only for lawful purposes. A fee of forty dollars shall be charged for a license for each utilization-of-funds member, and the department may prescribe a separate application form for such license;

(b) For a Class II license only, the name, address, social security number, and date of birth of the individual to be licensed as the gaming manager. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and all rules and regulations adopted pursuant to such acts. A fee of one hundred dollars shall be charged for a license for each gaming manager, and the department may prescribe a separate application form for such license;

(c) The name and address of the owner or lessor of the premises in which bingo will be conducted; and

(d) Any other information which the department deems necessary, including, but not limited to, copies of any and all lease or rental agreements and contracts entered into by the organization relative to its bingo activities.

(3) The information required by this section shall be kept current. A licensed organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) Except for a limited period bingo, a licensed organization shall not conduct any bingo game or occasion at any time, on any day, at any location, or in any manner different from that described in its most recent filing with the department unless prior approval has been obtained from the department. A request for approval to change the day, time, or location of a bingo occasion shall be made by the bingo chairperson, in writing, at least thirty days in advance of the date the proposed change is to become effective.

(5) No bingo chairperson, alternate bingo chairperson, utilization-of-funds member, or gaming manager for an organization shall be connected with, interested in, or otherwise concerned directly or indirectly with any party licensed as a manufacturer, distributor, or commercial lessor pursuant to the Nebraska Bingo Act or with any party licensed as a manufacturer or distributor pursuant to the Nebraska Pickle Card Lottery Act.

(6) No person shall act as a gaming manager until he or she has received a license from the department. A gaming manager may apply for a license to act as a gaming manager for more than one licensed organization by completing a separate application and paying the license fee for each organization for which he or she intends to act as a gaming manager. No gaming manager shall be a bingo chairperson or alternate bingo chairperson, and no gaming manager shall hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act.

(7) No person shall act as a utilization-of-funds member until he or she has received a license from the department. A utilization-of-funds member shall not hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, and the Nebraska Pickle Card Lottery Act, except that a utilization-of-funds member may also be designated as the bingo chairperson or alternate bingo chairperson for the same organization.

Source: Laws 1994, LB 694, § 34; Laws 1995, LB 344, § 5; Laws 2002, LB 545, § 12; Laws 2007, LB638, § 2.
Effective date September 1, 2007.

Cross Reference

Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.

9-232.02 Licenses; renewal; procedure; fee. (1) All licenses to conduct bingo and licenses issued to utilization-of-funds members, gaming managers, or commercial lessors shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted at least forty-five days prior to the expiration date of the

license. The department may prescribe a separate application form for renewal purposes for any license application required by the Nebraska Bingo Act. The renewal application may require such information as the department deems necessary for the proper administration of the act.

(2) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(3) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(4) A license issued to a commercial lessor shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1994, LB 694, § 35; Laws 1997, LB 248, § 3; Laws 2000, LB 1086, § 5; Laws 2002, LB 545, § 13; Laws 2007, LB638, § 3.
Effective date September 1, 2007.

9-233 Licenses; classes; fees. (1) The department may issue an applicant organization one of the following classes of bingo licenses:

(a) A Class I license which shall include organizations with gross receipts from the conduct of bingo which are less than one hundred thousand dollars per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation; or

(b) A Class II license which shall include organizations with gross receipts from the conduct of bingo equal to or greater than one hundred thousand dollars per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

(2) For purposes of this section, when bingo occasions are conducted on a joint basis by two or more licensed organizations, the class of license required shall be determined based upon the combined gross receipts of all licensed organizations involved in the conduct of the bingo occasion.

(3) A biennial fee of thirty dollars shall be charged for a Class I license, and a biennial fee of one hundred dollars shall be charged for a Class II license.

(4) The department shall adopt and promulgate rules and regulations to establish reporting requirements for each class of license issued.

Source: Laws 1978, LB 351, § 20; Laws 1982, LB 928, § 4; Laws 1983, LB 259, § 17; Laws 1984, LB 949, § 22; R.S.Supp.,1984, § 9-143; Laws 1986, LB 1027, § 34; Laws 1988, LB 295, § 19; Laws 1991, LB 427, § 14; Laws 1994, LB 694, § 33; Laws 2000, LB 1086, § 7; Laws 2002, LB 545, § 14; Laws 2007, LB638, § 4.
Effective date September 1, 2007.

9-236 Repealed. Laws 2007, LB 638, § 21.

9-239 Bingo; taxation. (1) The department shall collect a state tax of three percent on the gross receipts received from the conducting of bingo within the state. The tax shall be remitted to the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. The tax shall be remitted quarterly, not later than thirty days after the close of the preceding quarter, together with any other reports as may be required by the department.

(2) Unless otherwise provided in the Nebraska Bingo Act, no occupation tax on any receipts derived from the conduct of bingo shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax.

Source: Laws 1978, LB 351, § 42; Laws 1979, LB 164, § 13; Laws 1983, LB 259, § 29; Laws 1984, LB 949, § 39; R.S.Supp.,1984, § 9-165; Laws 1986, LB 1027, § 40; Laws 1990, LB 1055, § 4; Laws 1991, LB 427, § 21; Laws 1997, LB 99, § 1; Laws 2007, LB638, § 5.
Effective date September 1, 2007.

9-241.03 Bingo occasions; additional restrictions; department; powers. (1) Irrespective of the number of organizations authorized to hold bingo occasions within a premises:

(a) No more than two bingo occasions per calendar week shall be held within a premises except as otherwise provided in subsection (3) of this section; and

(b) No more than four limited period bingos with an aggregate of no more than twelve days per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation and no more than two special event bingos with an aggregate of no more than fourteen days per calendar year shall be held within a premises.

(2) Bingo occasions held as part of a limited period bingo or special event bingo, or a bingo occasion that was canceled due to an act of God and rescheduled pursuant to section 9-241.02, shall not be counted in determining whether the use of a premises is in compliance with subdivision (1)(a) of this section.

(3) Notwithstanding the restriction contained in subdivision (1)(a) of this section, the department may authorize more than two bingo occasions per calendar week to be held within

a premises if a licensed organization or commercial lessor can demonstrate in writing to the department that utilizing the premises for the conduct of bingo more than two times per calendar week will result in a cost savings for each of the licensed organizations who would be utilizing the premises. If the department authorizes a premises to be used more than two times per calendar week, the department shall not permit more than one bingo occasion per calendar day to be held in a premises except when one of the occasions is a limited period bingo or a special event bingo.

Source: Laws 1994, LB 694, § 40; Laws 1997, LB 248, § 4; Laws 2000, LB 1086, § 8; Laws 2001, LB 268, § 2; Laws 2007, LB638, § 6.
Effective date September 1, 2007.

9-255.06 Commercial lessor's license; when required; application; form; contents; fee; bingo equipment; restrictions; conduct of bingo; restrictions; exemption. (1) An individual, partnership, limited liability company, corporation, or organization which will be leasing a premises to one or more organizations for the conduct of bingo and which will receive more than two hundred fifty dollars per month as aggregate total rent from leasing such premises for the conduct of bingo shall first obtain a commercial lessor's license from the department. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The name and home address of the applicant;

(b) If the applicant is an individual, the applicant's social security number;

(c) If the applicant is not a resident of this state or is not a corporation, the full name, business address, and home address of a natural person, at least nineteen years of age, who is a resident of and living in this state designated by the applicant as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the applicant;

(d) A designated mailing address and legal description of the premises intended to be covered by the license sought;

(e) The lawful capacity of the premises for public assembly purposes;

(f) The amount of rent to be paid or other consideration to be given directly or indirectly for each bingo occasion to be conducted; and

(g) Any other information which the department deems necessary.

(2) An application for a commercial lessor's license shall be accompanied by a biennial fee of two hundred dollars for each premises the applicant is seeking to lease pursuant to subsection (1) of this section. A commercial lessor who desires to lease more than one premises for the conduct of bingo shall file a separate application and pay a separate fee for each such premises.

(3) The information required by this section shall be kept current. The commercial lessor shall notify the department within thirty days of any changes to the information contained on or with the application.

(4) A commercial lessor who will be leasing or renting bingo equipment in conjunction with his or her premises shall obtain such equipment only from a licensed distributor, except

that a commercial lessor shall not purchase or otherwise obtain disposable paper bingo cards from any source.

(5) A commercial lessor, the owner of a premises, and all parties who lease or sublease a premises which ultimately is leased to an organization for the conduct of bingo shall not be involved directly with the conduct of any bingo occasion regulated by the Nebraska Bingo Act which may include, but not be limited to, the managing, operating, promoting, advertising, or administering of bingo. Such persons shall not derive any financial gain from any gaming activities regulated by Chapter 9 except as provided in subsection (4) of section 9-347 if the individual is licensed as a pickle card operator, if the individual is licensed as a lottery operator or authorized sales outlet location pursuant to the Nebraska County and City Lottery Act, or if the individual is contracted with as a lottery game retailer pursuant to the State Lottery Act.

(6) A nonprofit organization owning its own premises which in turn rents or leases its premises solely to its own auxiliary shall be exempt from the licensing requirements contained in this section.

Source: Laws 1994, LB 694, § 54; Laws 1997, LB 752, § 62; Laws 2000, LB 1086, § 9; Laws 2002, LB 545, § 19; Laws 2007, LB638, § 7.
Effective date September 1, 2007.

Cross Reference

Nebraska County and City Lottery Act, see section 9-601.
State Lottery Act, see section 9-801.

9-266 Reports and records; disclosure; limitations; violation; penalty. (1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Bingo Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a licensee, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, a certified copy of any report or record, (b) the publication of statistics so classified as to prevent the identification of particular reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of reports or records submitted by a licensed distributor or manufacturer when information on the reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to

a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Bingo Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license or permit denials, suspensions, cancellations, or revocations, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license or permit to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed pursuant to section 9-255.05 or any other report filed by a licensee pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for an administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed or issued a permit to conduct activities under the act, the locations at which such activities are conducted by licensees or permittees, or the dates on which such licenses or permits were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 295, § 34; Laws 1989, LB 767, § 27; Laws 1991, LB 427, § 28; Laws 1994, LB 694, § 61; Laws 1995, LB 344, § 10; Laws 2007, LB638, § 8.
Effective date September 1, 2007.

ARTICLE 3

PICKLE CARDS

Section.

9-356. Returns, reports, and records; disclosure; limitations; violation; penalty.

9-322.03 Repealed. Laws 2007, LB 638, § 21.

9-328 Licenses; renewal; application; requirements; classes; fees. (1) All licenses to conduct a lottery by the sale of pickle cards and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license unless such application only pertains to the conduct of a lottery by the sale of pickle cards at a special function as provided in section 9-345.01.

(2) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

(3) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(4) The department shall establish classes of licenses for licensed organizations based upon the manner in which the licensed organization intends to sell the pickle cards. The classes shall include:

(a) Class I licenses which shall include organizations which sell individual pickle cards only at the organization's designated premises and at the organization's licensed regularly scheduled bingo occasions pursuant to the Nebraska Bingo Act; and

(b) Class II licenses which shall include organizations which sell the pickle cards on the premises of one or more licensed pickle card operators.

A licensed organization holding a Class II license shall be required to market and deliver its pickle cards by a licensed sales agent.

(5) A biennial license fee of two hundred dollars shall be charged for each Class I license, three hundred dollars for each Class II license, and forty dollars for a license for each utilization-of-funds member.

(6) The department shall adopt and promulgate rules and regulations establishing reporting requirements for each class of license.

Source: Laws 1986, LB 1027, § 94; Laws 1988, LB 1232, § 26; Laws 1989, LB 767, § 33; Laws 1991, LB 427, § 33; Laws 1994, LB 694, § 74; Laws 2000, LB 1086, § 11; Laws 2002, LB 545, § 30; Laws 2007, LB638, § 9.
Effective date September 1, 2007.

Cross Reference

Nebraska Bingo Act, see section 9-201.

9-329 Sales agent; license required; application; contents; fee; temporary license. (1) Unless otherwise authorized by the department, no person shall market, sell, or deliver any pickle card unit to any pickle card operator without first obtaining a sales agent license.

(2) Any person wishing to operate as a sales agent in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and social security number of the person applying for the license, (b) the name and state identification number of the licensed organization for which any pickle card units are to be marketed or sold by the applicant, and (c) such other information which the department deems necessary.

(3) A statement signed by the person licensed as a utilization-of-funds member signifying that such licensed organization approves the applicant to act as a sales agent on behalf of such organization shall accompany each sales agent's application for a license. No person licensed as a utilization-of-funds member shall be licensed as a sales agent.

(4)(a) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section. The department shall remit the proceeds from such fee to the State Treasurer for credit to the Charitable Gaming Operations Fund. Such licenses shall expire as prescribed in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

(b) A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(5) The information required by this section shall be kept current. A sales agent shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(6) The department may prescribe a separate application form for renewal purposes.

(7) The department may issue a temporary license pending receipt of additional information or further inquiry.

Source: Laws 1985, LB 408, § 18; R.S.Supp.,1985, § 9-143.01; Laws 1986, LB 1027, § 95; Laws 1988, LB 1232, § 31; Laws 1991, LB 427, § 34; Laws 1994, LB 694, § 75; Laws 2000, LB 1086, § 12; Laws 2002, LB 545, § 31; Laws 2007, LB638, § 10.
Effective date September 1, 2007.

9-329.02 Pickle card operator; license required; application; contents; fee; restrictions; authorization required; equipment requirements. (1) A pickle card operator shall not be eligible to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards without first obtaining a license.

(2) Any sole proprietorship, partnership, limited liability company, or corporation wishing to operate as a pickle card operator in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and state identification number of the sole proprietorship, partnership, limited liability company, or corporation applying for the license, (b) a description of the premises on which the pickle cards will be sold or offered for sale, (c) if the applicant is an individual, the applicant's social security number, and (d) such other information which the department deems necessary. The information required by this subsection shall be kept current. A pickle card operator shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(3) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section and shall be paid for by the applicant. A licensed organization shall not pay the required licensing fees of a pickle card operator as an inducement for the pickle card operator to sell individual pickle cards on its behalf. Such licenses shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation and may be renewed biennially. The department shall remit the proceeds from such license fees to the State Treasurer for credit to the Charitable Gaming Operations Fund. An application for license renewal shall be submitted to the department at least sixty days prior to the expiration date of the license.

(4) One license issued to any sole proprietorship, partnership, limited liability company, or corporation under this section as a pickle card operator shall cover the sole proprietorship, partnership, limited liability company, or corporation and the employees of the licensed pickle card operator. Any license issued pursuant to this section shall be valid only for the sole proprietorship, partnership, limited liability company, or corporation in the name of which it was issued and shall allow the sale of individual pickle cards only on the premises described in the pickle card operator's application for a license. A pickle card operator's license may not be transferred under any circumstances including change of ownership.

(5) The department may prescribe a separate application form for renewal purposes.

(6) A licensed pickle card operator shall not sell individual pickle cards on behalf of a licensed organization until an authorization has been obtained from the department by the licensed organization. The licensed organization shall file an application with the department for such authorization on a form prescribed by the department. Each application for an authorization shall include (a) the name, address, and state identification number of the licensed pickle card operator and (b) such other information which the department deems necessary. The application shall include a statement signed by a person licensed as a

utilization-of-funds member signifying that such licensed organization approves the pickle card operator to sell individual pickle cards on behalf of such organization.

(7) A pickle card operator may sell individual pickle cards on behalf of more than one licensed organization. Each licensed organization for which the pickle card operator desires to sell individual pickle cards shall obtain the authorization described in subsection (6) of this section.

(8) A pickle card operator who sells individual pickle cards through a coin-operated or currency-operated dispensing device shall purchase, lease, or rent its own equipment. If such equipment is obtained from a licensed organization or distributor, it shall be purchased, leased, or rented at a rate not less than fair market value. A licensed organization or distributor shall not provide such equipment to a pickle card operator free of charge or at a rate less than fair market value as an inducement for the pickle card operator to sell a licensed organization's individual pickle cards. The department may require a licensed organization, distributor, or pickle card operator to provide such documentation as the department deems necessary to verify that a pickle card operator has purchased, leased, or rented the equipment for a rate not less than fair market value.

(9) No pickle card operator shall generate revenue from the sale of individual pickle cards which exceeds the revenue generated from other retail sales on an annual basis. For purposes of this subsection, retail sales shall not include revenue generated from other charitable gaming activities authorized by Chapter 9.

Source: Laws 1988, LB 1232, § 33; Laws 1989, LB 767, § 34; Laws 1991, LB 427, § 35; Laws 1993, LB 121, § 111; Laws 1994, LB 694, § 77; Laws 1995, LB 344, § 15; Laws 1997, LB 752, § 65; Laws 2000, LB 1086, § 13; Laws 2007, LB638, § 11.
Effective date September 1, 2007.

9-356 Returns, reports, and records; disclosure; limitations; violation; penalty. (1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any tax return or any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Pickle Card Lottery Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, licensee, or his or her duly authorized representative or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, a certified copy of any tax return or report or record, (b) the publication of statistics so classified as to prevent the identification of particular tax returns or reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of tax returns or reports or records submitted by a licensed distributor or manufacturer when information on the tax returns or reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the

taxpayer or licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Pickle Card Lottery Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license denials, suspensions, cancellations, or revocations or the levying of fines, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed pursuant to section 9-349 or any other report filed by a licensed organization, sales agent, or pickle card operator pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for any administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities are conducted by license holders, or the dates on which such licenses were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect a tax return or reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the returns or reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect a tax return or reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 1232, § 51; Laws 1991, LB 427, § 43; Laws 1994, LB 694, § 93; Laws 1995, LB 344, § 24; Laws 2007, LB638, § 12.
Effective date September 1, 2007.

ARTICLE 4

LOTTERIES AND RAFFLES

Section.

9-424 License; application; contents; fee; duty to keep current. (1) Each applicant for a license to conduct a lottery or raffle shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant and, if the applicant is an individual, his or her social security number;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-423;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, date of birth, and years of membership of a bona fide and active member of the applicant organization to be licensed as a utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Lottery and Raffle Act and all rules and regulations adopted pursuant to the act, that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization except payments authorized by the act, and that all net profits will be spent only for lawful purposes. The department may prescribe a separate application for such license;

(e) A roster of members, if the department deems it necessary and proper;

(f) Other information which the department deems necessary; and

(g) A thirty-dollar biennial license fee for the organization and a forty-dollar biennial license fee for each utilization-of-funds member.

(2) The information required by this section shall be kept current. An organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

Source: Laws 1986, LB 1027, § 145; Laws 1994, LB 694, § 104; Laws 1997, LB 752, § 68; Laws 2007, LB638, § 13.
Effective date September 1, 2007.

9-425 Licenses; renewal; application; requirements; temporary license; fee. (1) All licenses to conduct a lottery or raffle and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least thirty days prior to the starting

date of the first lottery or raffle ticket sales for the biennial licensing period. The department may issue a temporary license prior to receiving all necessary information from the applicant.

(2) A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code, other than a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the code, or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1986, LB 1027, § 146; Laws 1994, LB 694, § 105; Laws 2000, LB 1086, § 17; Laws 2002, LB 545, § 43; Laws 2007, LB638, § 14.
Effective date September 1, 2007.

ARTICLE 8

STATE LOTTERY

Section.

9-803 Terms, defined. For purposes of the State Lottery Act:

(1) Director shall mean the Director of the Lottery Division;

(2) Division shall mean the Lottery Division of the Department of Revenue;

(3) Lottery contractor shall mean a lottery vendor or lottery game retailer with whom the division has contracted for the purpose of providing goods or services for the state lottery;

(4) Lottery game shall mean any variation of the following types of games:

(a) An instant-win game in which disposable tickets contain certain preprinted winners which are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols, or configurations, or any combination thereof, as provided by the rules of the game. An instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game. An instant-win game shall not include the use of any pickle card as defined in section 9-315; and

(b) An on-line lottery game in which lottery game retailer terminals are hooked up to a central computer via a telecommunications system through which (i) a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules or (ii) a player purchases a ticket bearing randomly selected numbers for eligibility in a drawing regularly scheduled in accordance with game rules.

Lottery game shall not be construed to mean any video lottery game;

(5) Lottery game retailer shall mean a person who contracts with or seeks to contract with the division to sell tickets in lottery games to the public;

(6) Lottery vendor shall mean any person who submits a bid, proposal, or offer as part of a major procurement;

(7) Major procurement shall mean any procurement or contract unique to the operation of the state lottery in excess of twenty-five thousand dollars for the printing of tickets used in any lottery game, security services, consulting services, advertising services, any goods or services involving the receiving or recording of number selections in any lottery game, or any goods or services involving the determination of winners in any lottery game. Major procurement shall include production of instant-win tickets, procurement of on-line gaming systems and drawing equipment, or retaining the services of a consultant who will have access to any goods or services involving the receiving or recording of number selections or determination of winners in any lottery game; and

(8) Ticket or lottery ticket shall mean any tangible evidence authorized by the division to prove participation in a lottery game.

Source: Laws 1991, LB 849, § 3; Laws 1993, LB 138, § 19; Laws 1994, LB 694, § 115; Laws 1995, LB 343, § 1; Laws 1999, LB 479, § 1; Laws 2007, LB638, § 15.
Effective date September 1, 2007.

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)(a) Beginning October 1, 2003, and until July 1, 2009, 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, except that the dollar amount transferred shall not be less than the dollar amount transferred to the funds in fiscal year 2002-03.

(b) On and after July 1, 2009, at least twenty-five percent 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.

(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 years 2009-10 through 2015-16, the Education Innovation Fund shall be allocated as follows: The first one million 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.

(g) 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.
Effective date September 1, 2007.

Cross Reference

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

9-833 Procurement of goods or services; director; powers; limitation. The director may contract for, purchase, or lease goods or services necessary for effectuating the purpose of the State Lottery Act. All procurements shall be subject to the act and shall be exempt from any other state law concerning the purchase of any goods or services, and all purchases in excess of twenty-five thousand dollars shall be subject to approval by the Tax Commissioner.

Source: Laws 1991, LB 849, § 33; Laws 1993, LB 138, § 52; Laws 2007, LB638, § 17.
Effective date September 1, 2007.

9-835 Major procurement; director; Tax Commissioner; powers and duties; limitation; assignment of contract. (1) Subject to the approval of the Tax Commissioner, the director may request proposals for or enter into major procurements for effectuating the purpose of the State Lottery Act. In awarding contracts in response to requests for proposals, the director shall award such contracts to the responsible vendor who submits the lowest and best proposal which maximizes the benefits to the state in relation to the cost in the areas of security, competence, quality of product, capability, timely performance, and maximization of net revenue to benefit the public purpose of the act. All contract awards made by the director exceeding twenty-five thousand dollars shall be approved by the Tax Commissioner.

(2) The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for a state elective office as defined in section 49-1444 after March 1, 1995, and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

(3) No contract may be assigned by a lottery contractor except by a written agreement approved by the Tax Commissioner and signed by the director.

Source: Laws 1991, LB 849, § 35; Laws 1993, LB 138, § 54; Laws 1995, LB 28, § 2; Laws 2007, LB638, § 18.
Effective date September 1, 2007.

ARTICLE 9

GAMING TAX AND LICENSE FEE

Section.

9-901 Repealed. Laws 2007, LB 64, § 1.

9-902 Repealed. Laws 2007, LB 64, § 1.

9-903 Repealed. Laws 2007, LB 64, § 1.

9-904 Repealed. Laws 2007, LB 64, § 1.

CHAPTER 11
BONDS AND OATHS, OFFICIAL

Article.
1. Official Bonds and Oaths. 11-104.
2. State Bond Approval. 11-201.

ARTICLE 1

OFFICIAL BONDS AND OATHS

Section.
11-104. Bonds or insurance coverage; municipal officers; form.

11-104 Bonds or insurance coverage; municipal officers; form. (1) All official bonds of officers of cities, towns, and villages shall be executed pursuant to section 11-103, except that they shall be made payable to the city, town, or village in which the officers giving such bonds shall be elected or appointed, in such penalty as the city council or board of trustees of the village may fix.

(2) In any city or village, in place of the individual bonds required to be furnished by municipal officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by municipal officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The municipality may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the person, council, or board authorized by law to fix the amounts and with such terms and conditions as may be required.

Source: Laws 1881, c. 13, § 4, p. 95; R.S.1913, § 5710; C.S.1922, § 5040; C.S.1929, § 12-104; Laws 2007, LB347, § 1.
Effective date September 1, 2007.

ARTICLE 2

STATE BOND APPROVAL

Section.
11-201. Bonds or insurance; state officers and employees; Risk Manager; Secretary of State; Attorney General; powers and duties.

11-201 Bonds or insurance; state officers and employees; Risk Manager; Secretary of State; Attorney General; powers and duties. It shall be the duty of the Risk Manager:

(1) To prescribe the amount, terms, and conditions of any bond or equivalent commercial insurance when the amount or terms are not fixed by any specific statute. The Risk Manager,

in prescribing the amount, deductibles, conditions, and terms, shall consider the type of risks, the relationship of the premium to risks involved, the past and projected trends for premiums, the ability of the Tort Claims Fund, the State Self-Insured Property Fund, and state agencies to pay the deductibles, and any other factors the manager may, in his or her discretion, deem necessary in order to accomplish the provisions of sections 2-1201, 3-103, 8-104, 8-105, 9-807, 11-119, 11-121, 11-201, 11-202, 37-110, 48-158, 48-609, 48-618, 48-721, 48-804.03, 53-109, 54-191, 55-123, 55-126, 55-127, 55-150, 57-917, 60-1303, 60-1502, 71-222.01, 72-1241, 77-366, 80-401.02, 81-111, 81-151, 81-8,128, 81-8,141, 81-1108.14, 81-2002, 83-128, 84-106, 84-206, and 84-801;

(2) To pass upon the sufficiency of and approve the surety on the bonds or equivalent commercial insurance of all officers and employees of the state, when approval is not otherwise prescribed by any specific statute;

(3) To arrange for the writing of corporate surety bonds or equivalent commercial insurance for all the officers and employees of the state who are required by statute to furnish bonds;

(4) To arrange for the writing of the blanket corporate surety bond or equivalent commercial insurance required by this section; and

(5) To order the payment of corporate surety bond or equivalent commercial insurance premiums out of the State Insurance Fund created by section 81-8,239.02.

All state employees not specifically required to give bond by section 11-119 shall be bonded under a blanket corporate surety bond or insured under equivalent commercial insurance for faithful performance and honesty in an amount not to exceed one million dollars.

The Risk Manager may separately bond any officer, employee, or group thereof under a separate corporate surety bond or equivalent commercial insurance policy for performance and honesty pursuant to the standards set forth in subdivision (1) of this section if the corporate surety or commercial insurer will not bond or insure or excludes from coverage any officer, employee, or group thereof under the blanket bond or commercial insurance required by this section, or if the Risk Manager finds that the reasonable availability or cost of the blanket bond or commercial insurance required under this section is adversely affected by any of the following factors: The loss experience, types of risks to be bonded or insured, relationship of premium to risks involved, past and projected trends for premiums, or any other factors.

Surety bonds of collection agencies, as required by section 45-608, and detective agencies, as required by section 71-3207, shall be approved by the Secretary of State. The Attorney General shall approve all bond forms distributed by the Secretary of State.

Source: Laws 1945, c. 13, § 1, p. 112; Laws 1955, c. 17, § 1, p. 88; Laws 1967, c. 36, § 3, p. 162; Laws 1969, c. 54, § 1, p. 354; Laws 1978, LB 653, § 8; Laws 1981, LB 273, § 1; Laws 1994, LB 1210, § 1; Laws 1996, LB 1044, § 45; Laws 1998, LB 922, § 392; Laws 2000, LB 901, § 1; Laws 2003, LB 242, § 1; Laws 2004, LB 884, § 10; Laws 2007, LB334, § 2.
Operative date July 1, 2007.

CHAPTER 12
CEMETERIES

Article.
12. Unmarked Human Burial Sites. 12-1208.

ARTICLE 12

UNMARKED HUMAN BURIAL SITES

Section.
12-1208. Discovery of remains or goods; society; duties.

12-1208 Discovery of remains or goods; society; duties. (1) Upon notification pursuant to section 12-1206, the society shall promptly assist in examining the discovered material to attempt to determine its origin and identity.

(2) If the society finds that the discovered human skeletal remains or burial goods are of non-American-Indian origin with a known or unknown identity, it shall notify the county attorney of the finding. Upon receipt of the finding, the county attorney shall cause the remains and associated burial goods to be interred in consultation with the county coroner. Reburial shall be in accordance with the wishes and at the expense of any known relatives in the order listed by section 38-1425 or, if no relatives are known, in an appropriate cemetery at the expense of the county in which the remains were discovered after a one-year scientific study period if such study period is considered necessary or desirable by the society. In no case shall any human skeletal remains that are reasonably identifiable as to familial or tribal origin be displayed by any entity which receives funding or official recognition from the state or any of its political subdivisions. In situations in which human skeletal remains or burial goods that are unidentifiable as to familial or tribal origin are clearly found to be of extremely important, irreplaceable, and intrinsic scientific value, the remains or goods may be curated by the society until the remains or goods may be reinterred as provided in this subsection without impairing their scientific value.

(3) If the society finds that the discovered human skeletal remains or burial goods are of American Indian origin, it shall promptly notify in writing the Commission on Indian Affairs and any known relatives in the order listed in section 38-1425 or, if no relatives are known, any Indian tribes reasonably identified as tribally linked to such remains or goods in order to ascertain and follow the wishes of the relative or Indian tribe, if any, as to reburial or other disposition. Reburial by any such relative or Indian tribe shall be by and at the expense of such relative or Indian tribe. In cases in which reasonably identifiable American Indian human skeletal remains or burial goods are unclaimed by the appropriate relative or Indian tribe, the society shall notify all other Indian tribes which can reasonably be determined to have lived in Nebraska in order to ascertain and follow the wishes of the tribe as to reburial or other disposition. Reburial by any such tribe shall be by and at the expense of the tribe. If

such remains or goods are unclaimed by the appropriate tribe, the remains or goods shall be reburied, as determined by the commission, by one of the four federally recognized Indian tribes in Nebraska.

Source: Laws 1989, LB 340, § 8; Laws 2001, LB 97, § 1; Laws 2007, LB463, § 1113. Operative date December 1, 2008.

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.

ARTICLE 5

BUDGETS

(a) NEBRASKA BUDGET ACT

Section.

(d) BUDGET LIMITATIONS

(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, (f) statutorily authorized sinking funds, or (g) the distribution of property tax receipts by a learning community to member school districts 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. Operative date July 1, 2008.

Cross Reference

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.

(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, 47-119.01, 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(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 section 79-1241; 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.
Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

ARTICLE 8

INTERLOCAL COOPERATION ACT

Section.

13-801 Act, how cited. Sections 13-801 to 13-827 shall be known and may be cited as the Interlocal Cooperation Act.

Source: Laws 1963, c. 333, § 2, p. 1071; R.S.1943, (1983), § 23-2202; Laws 1991, LB 731, § 1; Laws 2007, LB636, § 1.
Effective date September 1, 2007.

13-808 Joint entity; issuance of bonds; powers; purposes. (1) Any joint entity may issue such types of bonds as its governing body may determine subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest

are payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint entity with any person, including any of those public agencies which are parties to the agreement creating the joint entity, or from its revenue generally or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the joint entity from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint entity shall be issued on behalf of those public agencies which are parties to the agreement creating such joint entity and shall be authorized to be issued for the specific purpose or purposes for which the joint entity has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint entity may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint entity formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint entity relating to (a) the operation, maintenance, or management of the property or facilities of such joint entity or (b) the operation, maintenance, or management of the property or facilities of such other joint entity.

Source: Laws 1991, LB 731, § 8; Laws 2002, LB 1211, § 1; Laws 2005, LB 217, § 9; Laws 2007, LB701, § 13.
Effective date May 2, 2007.

Cross Reference

Public Facilities Construction and Finance Act, see section 72-2301.

13-824.01 Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding. (1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, operation, ownership, maintenance, or purchase of an electric generating facility and related facilities.

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

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

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

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

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

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

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

(a) No responsive bids are received; or

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

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

notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

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

Source: Laws 2007, LB636, § 2.
Effective date September 1, 2007.

13-824.02 Advertisement for sealed bids; requirements. Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the joint entity. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body of the joint entity in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the joint entity, giving the location thereof, the time within which bids shall be filed, and the date, hour, and place the same shall be opened.

Source: Laws 2007, LB636, § 3.
Effective date September 1, 2007.

13-824.03 Governing body; award of contract; considerations. The governing body of the joint entity may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid, or in the sole discretion of the governing body, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 13-824.02. In determining whether a bidder is responsible, the governing body may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, and ability to meet delivery or performance deadlines and whether the bid is in conformance with specifications. Consideration may also be given by the governing body of the joint entity to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, the preservation of uniformity, and the coordination of machinery and equipment with other machinery and

equipment already installed. No such contract shall be valid nor shall any money of the joint entity be expended thereunder unless advertisement and letting has been had as provided in sections 13-824.01 to 13-824.03.

Source: Laws 2007, LB636, § 4.
Effective date September 1, 2007.

ARTICLE 9

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section.
13-901. Act, how cited.
13-910. Act and sections; exemptions.
13-927. Skatepark and bicycle motocross park; sign required; warning notice.

13-901 Act, how cited. Sections 13-901 to 13-927 shall be known and may be cited as the Political Subdivisions Tort Claims Act.

Source: Laws 1969, c. 138, § 20, p. 634; Laws 1984, LB 590, § 1; Laws 1985, Second Spec. Sess., LB 14, § 1; Laws 1987, LB 258, § 5; R.S.Supp.,1987, § 23-2420; Laws 2007, LB564, § 1.
Effective date May 17, 2007.

13-910 Act and sections; exemptions. The Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation is valid;

(2) Any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion is abused;

(3) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to such political subdivision to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the political subdivision had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(4) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim based upon the negligent execution by an employee of the political subdivision in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act;

(5) Any claim arising with respect to the assessment or collection of any tax or fee or the detention of any goods or merchandise by any law enforcement officer;

(6) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(7) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim by an employee of the political subdivision which is covered by the Nebraska Workers' Compensation Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the political subdivision responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any political subdivision in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the political subdivision;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other public place due to weather conditions. Nothing in this subdivision shall be construed to limit a political subdivision's liability for any claim arising out of the operation of a motor vehicle by an employee of the political subdivision while acting within the course and scope of his or her employment by the political subdivision;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the political subdivision or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. A political subdivision shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the political subdivision has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim; or

(13)(a) Any claim relating to recreational activities for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected by the political subdivision leasing, owning, or in control of the premises within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith,

in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, a political subdivision shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the political subdivision only to the extent the political subdivision retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (3) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the political subdivision and used for recreational activities.

Source: Laws 1969, c. 138, § 9, p. 629; Laws 1986, LB 811, § 10; R.S.Supp.,1986, § 23-2409; Laws 1992, LB 262, § 8; Laws 1993, LB 370, § 2; Laws 1996, LB 900, § 1025; Laws 1999, LB 228, § 1; Laws 2004, LB 560, § 1; Laws 2005, LB 276, § 98; Laws 2007, LB564, § 2.
Effective date May 17, 2007.

Cross Reference

Motor Vehicle Certificate of Title Act, see section 60-101.
Nebraska Workers' Compensation Act, see section 48-1,110.
State Boat Act, see section 37-1291.

13-927 Skatepark and bicycle motocross park; sign required; warning notice. (1) A political subdivision shall post and maintain a sign at each skatepark and bicycle motocross park sponsored by the political subdivision containing the following warning notice: Under Nebraska law, a political subdivision is not liable for an injury to or the death of a participant in recreational activities resulting from the inherent risks of the recreational activities pursuant to section 13-910.

(2) The absence of a sign shall not give rise to liability on the part of the political subdivision.

Source: Laws 2007, LB564, § 3.
Effective date May 17, 2007.

ARTICLE 11

INDUSTRIAL DEVELOPMENT

(a) INDUSTRIAL DEVELOPMENT BONDS

(a) INDUSTRIAL DEVELOPMENT BONDS

13-1102 Governing body; powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

(1) To acquire, whether by construction, purchase, devise, gift, or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within, or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of sections 13-1101 to 13-1110;

(3) To finance the acquisition, construction, rehabilitation, or purchase of projects in blighted areas. The power to finance such projects in blighted areas shall mean and include the power to enter into any type of agreement, including a loan agreement, when the other party to the agreement agrees (a) to use the proceeds of money provided under the agreement to pay the costs of such acquisition, construction, rehabilitation, or purchase and any costs incident to the issuance of the related bonds and the funding of any reserve funds, (b) to be bound by the terms of the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, and sections 48-1219 to 48-1227, regardless of the number of employees, and (c) to make payments to the municipality or county sufficient to enable it to pay on a timely basis all principal, redemption premiums, and interest on the related revenue bonds issued to provide such financing, and any amounts necessary to repay such municipality or county for any and all costs incurred by it that are incidental to such financing. Title to any such project in a blighted area need not be in the name of the municipality or county, but may be in the name of a private party;

(4) To issue revenue bonds for the purpose of defraying the cost of acquiring, improving, or financing any project or projects, including the cost of any real estate previously purchased and used for such project or projects, or the cost of any option in connection with acquiring such property, and to secure the payment of such bonds as provided in sections 13-1101 to 13-1110, which revenue bonds may be issued in two or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of sections 13-1101 to 13-1110; and

(5) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county, except that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

No municipality or county shall have the power to (a) operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, (b) lease any project acquired under powers conferred by this section for use principally for commercial feeding of livestock, (c) issue bonds under this section principally for the purpose of financing the construction or acquisition of commercial feeding facilities for livestock, or (d) acquire any project or any part thereof by condemnation.

Source: Laws 1961, c. 54, § 2, p. 201; Laws 1967, c. 86, § 1, p. 271; Laws 1972, LB 1261, § 2; Laws 1983, LB 451, § 2; R.S.1943, (1983), § 18-1615; Laws 2007, LB265, § 1.
Operative date September 1, 2007.

Cross Reference

Age Discrimination in Employment Act, see section 48-1001.
Nebraska Fair Employment Practice Act, see section 48-1125.

ARTICLE 12

NEBRASKA PUBLIC TRANSPORTATION ACT

Section.
13-1207. Department of Health and Human Services; review rules and regulations and the awarding of funds.

13-1207 Department of Health and Human Services; review rules and regulations and the awarding of funds. Prior to the promulgation of rules and regulations pursuant to section 13-1212, and prior to the awarding of federal or state funds under any program administered by the department or any other state agency which affects the transportation of the elderly, such rules and regulations and the awarding of such funds shall be reviewed by the Department of Health and Human Services.

Source: Laws 1975, LB 443, § 11; Laws 1984, LB 635, § 1; R.S.Supp.,1986, § 19-3907; Laws 1996, LB 1044, § 53; Laws 2007, LB296, § 23.
Operative date July 1, 2007.

ARTICLE 13

PUBLIC BUILDING COMMISSION

Section.
13-1303. Commission; created; membership; expenses; quorum; corporate existence.

13-1303 Commission; created; membership; expenses; quorum; corporate existence. There is hereby created and established in each county a commission to be known

and designated as (name of city) (name of county) public building commission, except that sections 13-1301 to 13-1312 shall not become operative in any county unless and until the governing body of the county by resolution shall activate the commission for such county. A copy of such resolution certified by the county clerk shall be filed with and recorded by the Secretary of State and also filed with the city clerk. Each such commission shall be a body politic and corporate and an instrumentality of the state.

Each commission shall be governed by a board of commissioners of five members, two of whom shall be appointed by the governing body of the county from among the members of such governing body, two of whom shall be appointed by the mayor of the city with the approval of the governing body of the city from among the members of such governing body, and the fifth of whom shall be appointed by the other four members. The fifth member shall be a resident of the county in which the commission is established. In the event the four members appointed by the county and the city cannot appoint the fifth member by a majority, the Governor, upon request of such four members, the city, or the county, shall appoint the fifth member. The term of office of each member of the board, except for the initial members, shall be four years or until a successor is appointed and takes office. Any vacancy on the board shall be filled (1) by the governing body of the county if the person whose membership was vacated was appointed by the governing body of the county, (2) by the mayor of the city with the approval of the governing body of the city if the person whose membership was vacated was appointed by the mayor, and (3) by the remaining four members if the person whose membership was vacated was appointed by the members of the board. The members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by sections 13-1301 to 13-1312 with reimbursement for mileage to be made at the rate provided in section 81-1176. A majority of the total number of members of the board shall constitute a quorum, and all action taken by the board shall be taken by a majority of such total number. The board may delegate to one or more of the members or to its officers, agents, and employees such powers and duties as it deems proper. Any member of the board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of a member of the board may be brought in the district court of the county upon resolution of the governing body of the city or the county.

The terms of office of the two persons initially appointed to the board by the governing body of the county shall be for one and four years, and such governing body shall designate which person shall serve for one year and which person shall serve for four years. The terms of office of the two persons initially appointed to the board by the mayor with the approval of the governing body of the city shall be for two and three years, and such governing body shall designate which person shall serve for two years and which person shall serve for three years. The term of office of the person initially appointed by the other members of the board shall be for four years. Terms of office on the board shall expire on the same day of the year, and the governing body of the county in making the first appointments to the board shall designate such expiration date.

The commission and its corporate existence shall continue until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged and the governing bodies of the city and county jointly determine that the commission is no longer needed. Upon the commission's ceasing to exist all rights or properties of the commission shall pass to and be vested in the city and county.

Source: Laws 1971, LB 1003, § 3; Laws 1981, LB 204, § 32; R.S.1943, (1983), § 23-2603; Laws 1990, LB 1043, § 1; Laws 1996, LB 1011, § 4; Laws 2007, LB233, § 1.
Effective date September 1, 2007.

ARTICLE 20

INTEGRATED SOLID WASTE MANAGEMENT

Section.
13-2036. Applications for permits; contents; department; powers and duties; contested cases; variance; minor modification; how treated.

13-2036 Applications for permits; contents; department; powers and duties; contested cases; variance; minor modification; how treated. (1) The department shall review applications for permits for facilities and provide for the issuance, modification, suspension, denial, or revocation of permits after public notice. Applications shall be on forms provided by the department which solicit information necessary to make a determination on the application. The department shall issue public notice of its intent to grant or deny an application for a permit within sixty days after receipt of an application containing all required information. If an application is granted and the permit is issued or modified, any aggrieved person may file a petition for a contested case with the department within thirty days after the granting or modification of the permit, but such petition shall not act as a stay of the permit. If an application is denied, the department shall provide written rationale therefor to the applicant. Any change, modification, or other deviation from the terms or conditions of an approved permit must be approved by the director prior to implementation. Minor modifications described in subsection (5) of this section shall not require public notice or hearing.

(2) The department shall condition the issuance of permits on terms necessary to protect the public health and welfare and the environment as well as compliance with all applicable regulations. Any applicant may apply to the department for a variance from rules and regulations. The director may grant such variance if he or she finds that the public health and welfare will not be endangered or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. The considerations, procedures, conditions, and limitations set forth in section 81-1513 shall apply to any variance granted pursuant to this section.

(3) The director shall require the owner or operator of a facility to undertake investigation and corrective action in the event of contamination or a threat of contamination caused by

the facility. Financial assurance for investigative or corrective action may be required in an amount determined by the director following notice and hearing.

(4) In addition to the information required by this section, the following specific areas shall be addressed in detail in any application filed in conjunction with the issuance, renewal, or reissuance of a permit for a facility:

(a) A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure of the facility as defined by the council. The plan shall include, but not be limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting the costs;

(b) A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of such control and treatment; and

(c) An emergency response and remedial action plan, including provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment and the identification of possible occurrences that may endanger human health and environment.

(5) If such application is modified after approval by the department, the application shall be resubmitted as a new proposal. The director may approve a minor modification of an application if he or she finds that the public health and welfare will not be endangered. The following minor modifications to an application are subject to departmental approval but do not require public notice or hearing:

(a) Correction of typographical errors;

(b) Change of name, address, or telephone number of persons or agencies identified in the application;

(c) Administrative or informational changes;

(d) Changes in procedures for maintaining operating records;

(e) Changes to provide for more frequent monitoring, reporting, sampling, or maintenance;

(f) Request for a compliance date extension if such date is not more than one hundred twenty days after the date specified in the approved permit;

(g) Adjustments to the cost estimates or the financial assurance instrument for inflation;

(h) Changes in the closure schedule for a unit or in the final closure schedule for the facility or an extension of the closure schedule;

(i) Changes to the days or hours of operation if the hours of operation are within the period from 6:00 a.m. to 8:00 p.m.;

(j) Changes to the facility contingency plan;

(k) Changes which improve sampling or analysis methods, procedures, or schedules;

(l) Changes in quality control or quality assurance plans which will better ensure that the specifications for construction, closure, sampling, or analysis will be met;

(m) Changes in the facility plan of operation which conform to guidance or rules approved by the Environmental Quality Council or provide more efficient waste handling or more effective waste screening; or

(n) Replacement of an existing monitoring well with a new well if location is not changed.

Source: Laws 1992, LB 1257, § 36; Laws 1994, LB 1207, § 8; Laws 2007, LB263, § 1. Effective date September 1, 2007.

ARTICLE 25

JOINT PUBLIC AGENCY ACT

Section.
13-2530. Revenue bonds authorized.

13-2530 Revenue bonds authorized. (1) Any joint public agency may issue such types of bonds as its board may determine subject only to any agreement with the holders of outstanding bonds, including bonds as to which the principal and interest are payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, bonds issued by any qualified public agency under the Public Facilities Construction and Finance Act, or leases made by the joint public agency with any person, including any of the public agencies which are parties to the agreement creating the joint public agency, or from its revenue generally or which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the joint public agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

(2) Any bonds issued by such joint public agency shall be issued on behalf of the joint public agency solely for the specific purpose or purposes for which the joint public agency has been created. Such specific purposes may include, but shall not be limited to, joint projects authorized by the Public Facilities Construction and Finance Act; solid waste collection, management, and disposal; waste recycling; sanitary sewage treatment and disposal; public safety communications; correctional facilities; water treatment plants and distribution systems; drainage systems; flood control projects; fire protection services; ground water quality management and control; river-flow enhancement; education and postsecondary education; hospital and other health care services; bridges, roads, and streets; and law enforcement.

(3) As an alternative to issuing bonds for financing public safety communication projects, any joint public agency may enter into a financing agreement with the Nebraska Investment Finance Authority for such purpose.

(4) Any joint public agency formed for purposes of providing or assisting with the provision of public safety communications may enter into an agreement with any other joint public

agency relating to (a) the operation, maintenance, or management of the property or facilities of such joint public agency or (b) the operation, maintenance, or management of the property or facilities of such other joint public agency.

Source: Laws 1999, LB 87, § 30; Laws 2002, LB 1211, § 2; Laws 2005, LB 217, § 10; Laws 2007, LB701, § 14.
Effective date May 2, 2007.

Cross Reference

Public Facilities Construction and Finance Act, see section 72-2301.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section.

13-2602 Legislative findings. (1) The Legislature finds that it will be beneficial to the economic well-being of the people of this state that there be convention and meeting center facilities and sports arena facilities of appropriate size and quality to host regional, national, or international events. Regional refers to states that border Nebraska; national refers to states other than those that border Nebraska; and international refers to nations other than the United States.

(2) The Legislature further finds that such facilities may (a) generate new economic activity as well as additional state and local taxes from persons residing within and outside the state and (b) create new economic opportunities for residents.

(3) In order that the state may receive any long-term economic and fiscal benefits from such facilities, a need exists to provide some state assistance to political subdivisions endeavoring to construct, acquire, substantially reconstruct, expand, operate, improve, or equip such facilities.

(4) Therefor, it is deemed to be in the best interest of both the state and its political subdivisions that the state assist political subdivisions in financing the construction, acquisition, substantial reconstruction, expansion, operation, improvement, or equipping of such facilities.

(5) The amount of state assistance shall be limited to a designated portion 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.

Source: Laws 1999, LB 382, § 2; Laws 2007, LB551, § 1.
Effective date June 1, 2007.

Cross Reference

Limitation on applications, see section 13-2612.

13-2603 Terms, defined. For purposes of the Convention Center Facility Financing Assistance Act:

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

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

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

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

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

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

(7) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

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

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

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2.
Effective date June 1, 2007.

Cross Reference

Limitation on applications, see section 13-2612.

13-2605 State assistance; application; contents. (1) All applications for state assistance under the Convention Center Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the eligible facility or the amounts necessary to repay the original investment by the applicant in the eligible facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Source: Laws 1999, LB 382, § 5; Laws 2007, LB551, § 3.
Effective date June 1, 2007.

Cross Reference

Limitation on applications, see section 13-2612.

13-2607 Board; assistance approved; when; quorum. (1) After consideration of the application and the evidence, the board shall issue a finding of whether the convention and meeting center facility or sports arena facility described in the application is eligible for state assistance.

(2) If the board finds that the facility described in the application is an eligible facility and that state assistance is in the best interest of the state, the application shall be approved.

(3) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the eligible facility.

(4) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Source: Laws 1999, LB 382, § 7; Laws 2007, LB551, § 4.
Effective date June 1, 2007.

Cross Reference

Limitation on applications, see section 13-2612.

13-2608 Repealed. Laws 2007, LB 551, § 10.

13-2609 Tax Commissioner; duties; certain retailers and operators; reports required. (1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved convention and meeting center facility, sports arena facility, or associated hotel to determine 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; and

(b) Certify annually the amount 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, to the State Treasurer.

(2) State sales tax revenue collected by retailers and operators that are not eligible facilities but are doing business at eligible facilities shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers and operators by the eligible facility. The informational returns shall be submitted to the department by the retailer or operator by the twenty-fifth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of eligible facilities and associated hotels to determine the appropriate amount of state sales tax revenue.

(3) Changes made to the Convention Center Facility Financing Assistance Act by Laws 2007, LB 551, shall apply to state sales tax revenue collected commencing on July 1, 2006.

Source: Laws 1999, LB 382, § 9; Laws 2007, LB551, § 5.
Effective date June 1, 2007.

Cross Reference

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to area with high concentration of poverty; development fund; committee. (1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

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

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

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of families 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 families 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 families 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.
Effective date June 1, 2007.

Cross Reference

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.

13-2612 Act; applications; limitation. The board shall not accept applications for assistance under the Convention Center Facility Financing Assistance Act after June 1, 2010.

Source: Laws 1999, LB 382, § 12; Laws 2007, LB551, § 7.
Effective date June 1, 2007.

ARTICLE 27

LOCAL CIVIC, CULTURAL, AND CONVENTION CENTER FINANCING ACT

Section.
13-2706. Grant application.

13-2706 Grant application. Any municipality, except a city that has received funding under the Convention Center Facility Financing Assistance Act, may apply for a grant of assistance from the fund. Application shall be made on forms developed by the department.

Source: Laws 1999, LB 382, § 18; Laws 2003, LB 385, § 2; Laws 2007, LB551, § 8.
Effective date June 1, 2007.

Cross Reference

Convention Center Facility Financing Assistance Act, see section 13-2601.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

Article.
2. Officers, Elections, Bonds, Salaries, Recall of Officers, Initiative, Referendum. 14-208.
5. Fiscal Management, Revenue, and Finances.
   (d) City Treasurer. 14-551 to 14-555.
   (e) Taxation. 14-561.
18. Metropolitan Transit Authority. 14-1821.
21. Public Utilities. 14-2109 to 14-2147.

ARTICLE 2

OFFICERS, ELECTIONS, BONDS, SALARIES, RECALL OF OFFICERS, INITIATIVE, REFERENDUM

Section.
14-208. City council; members; bond or insurance.

14-208 City council; members; bond or insurance. All members of the city council of a city of the metropolitan class shall qualify and give bond or evidence of equivalent insurance in the sum of five thousand dollars.

Source: Laws 1921, c. 116, art. II, § 8, p. 423; C.S.1922, § 3533; C.S.1929, § 14-208; R.S.1943, § 14-208; Laws 1979, LB 80, § 7; Laws 1994, LB 76, § 475; Laws 2007, LB347, § 2.
Effective date September 1, 2007.

ARTICLE 5

FISCAL MANAGEMENT, REVENUE, AND FINANCES

(d) CITY TREASURER

Section.
14-551. Repealed. Laws 2007, LB 206, § 5.
14-552. Repealed. Laws 2007, LB 206, § 5.
14-553. City treasurer; duties.
14-554. Taxes and assessments; collection; compensation to county.
14-555. Repealed. Laws 2007, LB 206, § 5.

(e) TAXATION

14-561. Repealed. Laws 2007, LB 206, § 5.

(d) CITY TREASURER

14-551 Repealed. Laws 2007, LB 206, § 5.

14-552 Repealed. Laws 2007, LB 206, § 5.

14-553 City treasurer; duties. The city treasurer of a city of the metropolitan class shall be a member of the finance department of such city and shall give bond or evidence of equivalent insurance in an amount as required by the finance director of such city. The treasurer shall be liable for the safekeeping and proper disbursement of all funds and money of the city collected or received by him or her. He or she shall keep his or her books and accounts in such manner as to show the amount of money collected by him or her from all sources, the condition of each fund into which the same has been placed, and the items of disbursement thereof.

Source: Laws 1921, c. 116, art. IV, § 41, p. 489; C.S.1922, § 3667; C.S.1929, § 14-544; Laws 2007, LB206, § 1; Laws 2007, LB347, § 3.
Effective date September 1, 2007.

14-554 Taxes and assessments; collection; compensation to county. (1) The county in which any city of the metropolitan class is located shall receive as full compensation an amount equal to one percent of all money collected from taxation by the county for such city. Such fee shall be paid monthly out of the general funds of the city.

(2) Such county shall receive as full compensation for the collection and disbursement of all money from taxation and pursuant to section 77-3523 coming to the board of education an amount equal to one percent thereof, to be paid out of the general fund.

(3) Such county shall receive as full compensation for the collection and disbursement of the funds of the metropolitan utilities district an amount equal to one percent of all money collected by the county treasurer.

Source: Laws 1921, c. 116, art. IV, § 42, p. 490; C.S.1922, § 3668; Laws 1927, c. 115, § 1, p. 323; C.S.1929, § 14-545; R.S.1943, § 14-554; Laws 1971, LB 292, § 1; Laws 1979, LB 65, § 31; Laws 1992, LB 746, § 60; Laws 1996, LB 604, § 1; Laws 2007, LB206, § 2.
Effective date September 1, 2007.

14-555 Repealed. Laws 2007, LB 206, § 5.

(e) TAXATION

14-561 Repealed. Laws 2007, LB 206, § 5.

ARTICLE 18

METROPOLITAN TRANSIT AUTHORITY

Section.
14-1821. Metropolitan transit authority; tax request; certification; levy; collection.

14-1821 Metropolitan transit authority; tax request; certification; levy; collection. To assist in the defraying of all character of expense of the authority and to such extent as in its discretion and judgment may be necessary, the board shall annually certify a tax request for the fiscal year commencing on the following January 1. Such tax request shall not exceed in any one year ten cents on each one hundred dollars on the taxable value of the taxable property in the city of the metropolitan class or taxable property in any county in which such city is located, adjacent county, or city or village located within such counties served by the authority. The board shall by resolution, on or before September 20 of each year, certify such tax request to the city council of such city and the governing board of any county in which such city is located, adjacent county, or city or village located within such counties served by the authority. Such county, city, or village is hereby authorized to cause such tax to be levied and to be collected as are other taxes by the treasurer of such city or village or county treasurer and paid over by him or her to the treasurer of such board subject to the order of such board and subject to section 77-3443. If in any year the full amount so certified and collected is not needed for the current purposes of such authority, the balance shall be credited to reserves of such authority to be used for acquisition of necessary property and equipment.

Source: Laws 1957, c. 23, § 21, p. 173; Laws 1972, LB 1275, § 17; Laws 1974, LB 875, § 1; Laws 1979, LB 187, § 35; Laws 1986, LB 1012, § 2; Laws 1987, LB 471, § 2; Laws 1992, LB 1063, § 6; Laws 1992, Second Spec. Sess., LB 1, § 6; Laws 1993, LB 734, § 23; Laws 1995, LB 452, § 4; Laws 1997, LB 269, § 19; Laws 2003, LB 720, § 6; Laws 2007, LB206, § 3.
Effective date September 1, 2007.

ARTICLE 21

PUBLIC UTILITIES

Section.

14-2109 Utilities district; personnel; duties; bond; salary. The board of directors of a metropolitan utilities district shall at its first regular meeting appoint an individual with an official title designated by the board who shall (1) act as secretary of such board, (2) have general supervision of the management, construction, operation, and maintenance of the utility plants and property under the jurisdiction of or owned by such metropolitan utilities district, subject to the direction of the board, (3) hold office at the pleasure of the board, (4) possess business training, executive experience, and knowledge of the development and operation of public utilities, (5) give bond for the faithful performance of his or her duties in the sum of not less than ten thousand dollars to be filed with and approved by the board of directors, (6) receive such compensation as the board may determine, which compensation shall not be decreased during the incumbency of any appointee, and (7) devote his or her exclusive time to the duties of the office. The board of directors may employ or authorize

the employment of such other employees and assistants as may be deemed necessary for the operation and maintenance of the utility plants under its jurisdiction and of the conduct of the affairs of the board and provide for their compensation. The compensation of the appointed individual and such employees shall be paid from funds under control of the board. In no event shall the compensation, as a salary or otherwise, of any employee or officer exceed ten thousand dollars per annum unless approved by a vote of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

Source: Laws 1913, c. 143, § 13, p. 356; R.S.1913, § 4255; Laws 1919, c. 33, § 2, p. 108; C.S.1922, § 3758; Laws 1923, c. 134, § 1, p. 329; C.S.1929, § 14-1014; R.S.1943, § 14-1020; Laws 1947, c. 20, § 3, p. 108; R.S.1943, (1983), § 14-1020; R.S.1943, (1991), § 14-1101.01; Laws 1992, LB 746, § 9; Laws 2001, LB 177, § 2; Laws 2007, LB207, § 1.
Effective date September 1, 2007.

14-2110 Utilities district; employees; removal. No regular appointee or employee of the metropolitan utilities district, except the individual appointed in section 14-2109, who has been in its service consecutively for more than one year and whose name has been placed, by a unanimous vote of the full board of directors, upon the permanent employees list provided for in the rules adopted by the board shall be subject to removal except upon a two-thirds vote of the full board and then only for cause which shall be stated in writing and filed with the secretary of the board at least ten days prior to a hearing preceding such removal.

Source: Laws 1913, c. 143, § 14, p. 356; R.S.1913, § 4256; Laws 1919, c. 33, § 3, p. 108; C.S.1922, § 3759; C.S.1929, § 14-1015; Laws 1941, c. 20, § 1, p. 110; C.S.Supp.,1941, § 14-1015; Laws 1943, c. 38, § 1(1), p. 180; R.S.1943, § 14-1021; R.S.1943, (1991), § 14-1021; Laws 1992, LB 746, § 10; Laws 2007, LB207, § 2.
Effective date September 1, 2007.

14-2146 Utilities district; annual audit; information; access. The Auditor of Public Accounts and the person making the examination and audit pursuant to section 14-2145 shall have access to all books, records, vouchers, papers, contracts, or other data containing information on the subject in the office of the board of such metropolitan utilities district, in the office of the individual appointed in section 14-2109, or in the possession or under the control of any of the agents or employees of the district. It is hereby made the duty of all officers, agents, and employees of the district to furnish to the auditor and his or her agents and employees such information regarding the auditing of the metropolitan utilities district as may be demanded.

Source: Laws 1915, c. 211, § 2, p. 470; C.S.1922, § 3769; C.S.1929, § 14-1025; R.S.1943, § 14-1035; R.S.1943, (1991), § 14-1035; Laws 1992, LB 746, § 46; Laws 2000, LB 692, § 4; Laws 2007, LB207, § 3.
Effective date September 1, 2007.

14-2147 Utilities district; annual audit; reports; filing; expenses. Upon the completion of such examination and audit, the person making the same shall file and furnish to the village or city clerk of each village or city within the district one copy of his or her

report. Another copy shall be furnished to the county board of the counties in which the metropolitan utilities district is located. A copy shall also be placed on file with the individual appointed in section 14-2109. The original copy shall be filed in the office of the Auditor of Public Accounts. The cost and expense of making such audit shall be paid by the metropolitan utilities district in which such audit and examination have been made. The auditor shall make out and certify a bill for the expense of making such an audit. Upon presentation of the bill to the secretary of the board of the metropolitan utilities district, it shall be the duty of the board to allow and pay the claim. The amount thereof shall be paid to the State Treasurer.

Source: Laws 1915, c. 211, § 3, p. 471; C.S.1922, § 3770; C.S.1929, § 14-1026; R.S.1943, § 14-1036; Laws 1957, c. 21, § 2, p. 154; R.S.1943, (1991), § 14-1036; Laws 1992, LB 746, § 47; Laws 2007, LB207, § 4.
Effective date September 1, 2007.

CHAPTER 15
CITIES OF THE PRIMARY CLASS

Article.
2. General Powers. 15-251.
3. Elections; Officers and Employees. 15-307 to 15-317.

ARTICLE 2

GENERAL POWERS

Section.
15-251. Officers and employees; bonds or insurance.

15-251 Officers and employees; bonds or insurance. A city of the primary class may require all officers or employees elected or appointed to give bond or evidence of equivalent insurance for the faithful performance of their duties. No officer shall become surety upon the official bond of another or upon any contractor's bond, license, or appeal bond given to the city or under any ordinance thereof. It shall be optional with such officers to give a surety or guaranty company bond.

Source: Laws 1901, c. 16, § 129, LI, p. 140; R.S.1913, § 4461; C.S.1922, § 3846; C.S.1929, § 15-249; R.S.1943, § 15-251; Laws 1961, c. 37, § 2, p. 163; Laws 2007, LB347, § 4.
Effective date September 1, 2007.

ARTICLE 3

ELECTIONS; OFFICERS AND EMPLOYEES

Section.
15-307. Elective officers; bond or insurance.
15-308. Appointive officers; bond or insurance.
15-317. Treasurer; bond or insurance; deputy; duties.

15-307 Elective officers; bond or insurance. All elective officers of the city, except council members, shall give a good and sufficient bond or evidence of equivalent insurance in an amount to be fixed by ordinance, for the faithful performance of their duties. Each council member before entering upon the duties of his or her office shall give a bond or evidence of equivalent insurance in favor of the city in the sum of two thousand dollars. If a bond is given, it shall be signed by a surety company or by two or more good and sufficient sureties who are residents of such city, who shall justify that he or she is worth at least two thousand dollars over and above his or her debts, liabilities, and exemptions, conditioned for the faithful discharge of the duties of the council members and conditioned further that if the council members vote for an expenditure of money or the creation of any liability in excess of the amount allowed by law, or vote for the transfer of any sum of money from one fund to another

where such transfer is not allowed by law, such council members and surety or sureties signing the bonds shall be liable thereon.

Source: Laws 1901, c. 16, § 16, p. 76; R.S.1913, § 4484; C.S.1922, § 3870; C.S.1929, § 15-307; Laws 2007, LB347, § 5.
Effective date September 1, 2007.

Cross Reference

Joint control of funds by principal and surety on bond, see section 11-130.

15-308 Appointive officers; bond or insurance. All appointive officers of the city before entering upon their respective duties shall give a good and sufficient bond or evidence of equivalent insurance in an amount to be fixed by ordinance in favor of the city, conditioned upon the faithful performance of their duties.

Source: Laws 1901, c. 16, § 17, p. 76; R.S.1913, § 4485; C.S.1922, § 3871; C.S.1929, § 15-308; Laws 2007, LB347, § 6.
Effective date September 1, 2007.

Cross Reference

Joint control of funds by principal and surety on bond, see section 11-130.

15-317 Treasurer; bond or insurance; deputy; duties. The treasurer shall be required to give a bond or evidence of equivalent insurance of not less than one hundred fifty thousand dollars or he or she may be required to give a bond or evidence of equivalent insurance double the sum of money estimated by the council to be at any time in his or her hands belonging to the city and school districts, and he or she shall be the custodian of all money belonging to the city and all securities belonging or to be held by the city. He or she shall keep a separate account of each fund or appropriation and debits and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid, and he or she shall also file copies of receipts with his or her monthly report. He or she shall monthly and as often as required render to the city council an account under oath showing the state of the treasury at that date, the amount of money remaining in each fund, the amount paid therefrom, and the balance of money in the treasury. He or she shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, together with any and all vouchers held by him or her, shall be filed in the clerk's office, and if he or she neglects or fails for thirty days from the end of any month to enter such accounts, his or her office may by resolution of the mayor and council be declared vacant, and the mayor with the concurrence of the council shall fill the vacancy by appointment until the next election of the city officers. The treasurer may employ and appoint a deputy and an assistant or assistants as determined by ordinance. The treasurer shall be liable upon his or her official bond for the acts of such appointees.

Source: Laws 1901, c. 16, § 31, p. 80; R.S.1913, § 4494; C.S.1922, § 3880; R.S.1943, § 15-317; Laws 1996, LB 1007, § 1; Laws 2007, LB347, § 7.
Effective date September 1, 2007.

Cross Reference

Joint control of funds by principal and surety on bond, see section 11-130.

CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
1. Incorporation, Extensions, Additions, Wards. 16-117.
2. General Powers. 16-219.
3. Officers, Elections, Employees. 16-304, 16-318.

ARTICLE 1

INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section.
16-117. Annexation; powers; procedure; hearing.

16-117 Annexation; powers; procedure; hearing. (1) 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 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.
Effective date September 1, 2007.

ARTICLE 2

GENERAL POWERS

Section.
16-219. Officers; bonds or insurance; restrictions upon officers as sureties.

16-219 Officers; bonds or insurance; restrictions upon officers as sureties. A city of the first class by ordinance may require all officers or servants, elected or appointed, to give bond and security or evidence of equivalent insurance for the faithful performance of their duties. No officer shall become surety upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from conviction in the county court for violation of any ordinance of such city.

Source: Laws 1901, c. 18, § 48, XXIV, p. 250; R.S.1913, § 4835; C.S.1922, § 4003; C.S.1929, § 16-220; R.S.1943, § 16-219; Laws 1972, LB 1032, § 102; Laws 2007, LB347, § 8.
Effective date September 1, 2007.

ARTICLE 3

OFFICERS, ELECTIONS, EMPLOYEES

Section.
16-304. Council; members; bond or insurance; payment of premium; amount; conditions.
16-318. City treasurer; bond or insurance; premium; duties; reports.

16-304 Council; members; bond or insurance; payment of premium; amount; conditions. Each council member, before entering upon the duties of his or her office, shall be required to give bond or evidence of equivalent insurance to the city. The bond shall be with two or more good and sufficient sureties or some responsible surety company. If by two sureties, they shall each justify that he or she is worth at least two thousand dollars over and above all debts and exemptions. Such bonds or evidence of equivalent insurance shall be in the sum of one thousand dollars and shall be conditioned for the faithful discharge of the duties of the council member giving such bond or insurance, and shall be further conditioned that if the council member shall vote for any expenditure or appropriation of money or creation of any liability in excess of the amount allowed by law, such council member, and the sureties signing such bond, shall be liable thereon. The bond shall be filed with the city clerk and approved by the mayor, and upon the approval, the city may pay the premium for such bond. Any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the council member voting for and the mayor approving such liability, obligation, or debt, and not the debt, liability, or obligation of the city. Voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office for which such council member or mayor may be removed from office.

Source: Laws 1901, c. 18, § 12, p. 232; Laws 1903, c. 19, § 1, p. 232; Laws 1907, c. 13, § 1, p. 106; R.S.1913, § 4872; Laws 1915, c. 85, § 1, p. 223; C.S.1922, § 4040; Laws 1923, c. 67, § 2, p. 202; C.S.1929, § 16-302; R.S.1943, § 16-304; Laws 1965, c. 49, § 1, p. 250; Laws 1979, LB 80, § 23; Laws 2007, LB347, § 9.
Effective date September 1, 2007.

16-318 City treasurer; bond or insurance; premium; duties; reports. The treasurer shall be required to give bond or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she may be required to give bond in double the sum of money estimated by the council at any time to be in his or her hands belonging to the city and school district, and he or she shall be the custodian of all money belonging to the corporation. The city council shall pay the actual premium of the bond or insurance coverage of such treasurer. The treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. He or she shall also file copies of such receipts, except tax receipts, with his or her monthly reports, and he or she shall at the end of every month, and as often as may be requested, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the

amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. He or she shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by him or her, shall be filed with his or her account in the clerk's office. He or she shall produce and show all funds shown by such report to be on hand, or satisfy the council or its committee that he or she has such funds in his or her custody or under his or her control. If the treasurer fails to render his or her account within twenty days after the end of the month, or by a later date established by the council, the mayor with the consent of the council may consider this failure as cause to remove the treasurer from office. The treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percent upon his or her collections to be fixed by the council not to exceed the fees allowed by law to the county treasurer for like services, and upon taxes collected by such delinquent tax collector the city treasurer shall receive no fees. The city treasurer shall prepare all paving and curbing tax lists and shall collect all paving and curbing taxes.

Source: Laws 1901, c. 18, § 26, p. 236; Laws 1909, c. 19, § 1, p. 181; R.S.1913, § 4884; C.S.1922, § 4052; C.S.1929, § 16-314; R.S.1943, § 16-318; Laws 1969, c. 77, § 1, p. 405; Laws 2005, LB 528, § 1; Laws 2007, LB347, § 10.
Effective date September 1, 2007.

CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

Article.

5. General Grant of Power. 17-503.02, 17-541.
6. Elections, Officers, Ordinances.
   (b) Officers. 17-604.

ARTICLE 5

GENERAL GRANT OF POWER

Section.

17-503.02. Personal property; sale; procedure; other conveyance.

17-541. Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when.

17-503.02 Personal property; sale; procedure; other conveyance. (1) The power of any city of the second class or village to convey any personal property owned by it shall be exercised by resolution directing the sale and the manner and terms of the sale. Following passage of the resolution directing the sale of the property, notice of the sale shall be posted in three prominent places within the city or village for a period of not less than seven days prior to the sale of the property. If the fair market value of the property is greater than five thousand dollars, notice of the sale shall also be published once in a legal newspaper published in or of general circulation in such city or village at least seven days prior to the sale of the property. The notice shall give a general description of the property offered for sale and state the terms and conditions of sale.

(2) Personal property may be conveyed notwithstanding the procedure in subsection (1) of this section when (a) such property is being sold in compliance with the requirements of federal or state grants or programs or (b) such property is being conveyed to another public agency.

Source: Laws 2003, LB 476, § 3; Laws 2007, LB28, § 1.
Effective date September 1, 2007.

17-541 Waterworks; water commissioner; appointment; term; bond or insurance; removal; public works commissioner, when. As soon as a system of waterworks or mains or portion or extension of any system of waterworks or water supply has been established by any city or village, the mayor of such city or the chairperson of the board of trustees of such village shall nominate and by and with the advice and consent of the city council or board of trustees, as the case may be, shall appoint any competent person who shall be known as the water commissioner of such city or village and whose term of office shall be for one fiscal year or until his or her successor is appointed and qualified. Annually at the first regular meeting of the city council or board of trustees in December, the water commissioner shall be

appointed as provided in this section. The water commissioner may at any time, for sufficient cause, be removed by a two-thirds vote of the city council or board of trustees. Any vacancy occurring in the office of water commissioner by death, resignation, removal from office, or removal from the city or village may be filled in the manner provided in this section for the appointment of such commissioner. The water commissioner shall, before he or she enters upon the discharge of his or her duties, execute a bond or provide evidence of equivalent insurance to such city or village in a sum to be fixed by the mayor and council or the board of trustees, but not less than five thousand dollars, conditioned upon the faithful discharge of his or her duties, and such bond shall be signed by two or more good and sufficient sureties, to be approved by the mayor and council or board of trustees or executed by a corporate surety. The water commissioner, subject to the supervision of the mayor and council or board of trustees, shall have the general management and control of the system of waterworks or mains or portion or extension of any system of waterworks or water supply in the city or village. In a city or village where no board of public works exists, and such municipality has other public utilities than its waterworks system, the mayor and council or the board of trustees, as the case may be, shall by ordinance designate the water commissioner as public works commissioner with authority to manage not only the system of waterworks but also other public utilities, and all of the provisions of this section applying to the water commissioner shall apply to the public works commissioner.

Source: Laws 1881, c. 23, § 8, XV, p. 180; Laws 1885, c. 20, § 1, XV, p. 170; Laws 1887, c. 12, § 1, XV, p. 299; Laws 1893, c. 8, § 1, p. 136; Laws 1903, c. 21, § 1, p. 252; Laws 1905, c. 30, § 1, p. 259; Laws 1907, c. 17, § 1, p. 129; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 273; Laws 1919, c. 48, § 1, p. 139; Laws 1919, c. 52, § 1, p. 153; Laws 1919, c. 46, § 2, p. 134; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 160; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 144; Laws 1937, c. 33, § 1, p. 158; C.S.Supp.,1941, § 17-441; R.S.1943, § 17-541; Laws 1961, c. 51, § 1, p. 193; Laws 2001, LB 484, § 1; Laws 2007, LB347, § 11.
Effective date September 1, 2007.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(b) OFFICERS

Section.

(b) OFFICERS

17-604 Officers; powers, duties, and compensation; regulate by ordinance; bond or insurance; premium. The city or village may enact ordinances or bylaws to regulate and prescribe the powers, duties, and compensation of officers not herein provided for, and to require from all officers and servants, elected or appointed, bonds and security or evidence

of equivalent insurance for the faithful performance of their duties. The city or village may pay the premium for such bonds or insurance coverage.

Source: Laws 1879, § 69, XIII, p. 214; Laws 1881, c. 23, § 8, XIII, p. 176; Laws 1885, c. 20, § 1, XIII, p. 166; Laws 1887, c. 12, § 1, XIII, p. 295; R.S.1913, § 5146; C.S.1922, § 4321; C.S.1929, § 17-512; R.S.1943, § 17-604; Laws 1965, c. 68, § 1, p. 288; Laws 2007, LB347, § 12.
Effective date September 1, 2007.

CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.

ARTICLE 21

COMMUNITY DEVELOPMENT

Section.

18-2101 Act, how cited. Sections 18-2101 to 18-2144 shall be known and may be cited as the Community Development Law.

Source: Laws 1951, c. 224, § 1, p. 797; R.R.S.1943, § 14-1601; Laws 1957, c. 52, § 1, p. 247; R.R.S.1943, § 19-2601; Laws 1973, LB 299, § 1; Laws 1997, LB 875, § 2; Laws 2007, LB562, § 1. Effective date September 1, 2007.

18-2103 Terms, defined. For purposes of the Community Development Law, unless the context otherwise requires:

(1) An authority means any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community development agency pursuant to the provisions of section 18-2101.01 and does not include a limited community redevelopment authority;

(2) Limited community redevelopment authority means a community redevelopment authority created pursuant to section 18-2102.01 having only one single specific limited pilot project authorized;

(3) City means any city or incorporated village in the state;

(4) Public body means the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;

(5) Governing body or local governing body means the city council, board of trustees, or other legislative body charged with governing the municipality;

(6) Mayor means the mayor of the city or chairperson of the board of trustees of the village;

(7) Clerk means the clerk of the city or village;

(8) Federal government means the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America;

(9) Area of operation means and includes the area within the corporate limits of the city and such land outside the city as may come within the purview of section 18-2123;

(10) Substandard areas means an area in which there is a predominance of buildings or improvements, whether nonresidential or residential in character, which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, (which cannot be remedied through construction of prisons), and is detrimental to the public health, safety, morals, or welfare;

(11) Blighted area means an area, which (a) by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and (b) in which there is at least one of the following conditions: (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average; (ii) the average age of the residential or commercial units in the area is at least forty years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent of the city as blighted, and a village shall not designate an area larger than one hundred percent of the village as blighted;

(12) Redevelopment project means any work or undertaking in one or more community redevelopment areas: (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas; (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan; (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project; (d) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan; (e) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property; and (f) to carry out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the redevelopment plan;

(13) Redevelopment plan means a plan, as it exists from time to time for one or more community redevelopment areas, or for a redevelopment project, which (a) conforms to the general plan for the municipality as a whole and (b) is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community redevelopment area, zoning and planning changes, if any, land uses, maximum densities, and building requirements;

(14) Redeveloper means any person, partnership, or public or private corporation or agency which enters or proposes to enter into a redevelopment contract;

(15) Redevelopment contract means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan;

(16) Real property means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate,

interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens;

(17) Bonds means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Community Development Law except for bonds issued pursuant to section 18-2142.04;

(18) Obligee means any bondholder, agent, or trustee for any bondholder, or lessor demising to any authority, established pursuant to section 18-2102.01, property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with such authority;

(19) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(20) Community redevelopment area means a substandard and blighted area which the community redevelopment authority designates as appropriate for a renewal project;

(21) Redevelopment project valuation means the valuation for assessment of the taxable real property in a redevelopment project last certified for the year prior to the effective date of the provision authorized in section 18-2147;

(22) Enhanced employment area means an area not exceeding six hundred acres (a) within a community redevelopment area which is designated by an authority as eligible for the imposition of an occupation tax or (b) not within a community redevelopment area as may be designated under section 18-2142.04;

(23) Employee means a person employed at a business as a result of a redevelopment project;

(24) Employer-provided health benefit means any item paid for by the employer in total or in part that aids in the cost of health care services, including, but not limited to, health insurance, health savings accounts, and employer reimbursement of health care costs;

(25) Equivalent employees means the number of employees computed by (a) dividing the total hours to be paid in a year by (b) the product of forty times the number of weeks in a year;

(26) Business means any private business located in an enhanced employment area;

(27) New investment means the value of improvements to real estate made in an enhanced employment area by a developer or a business;

(28) Number of new employees means the number of equivalent employees that are employed at a business as a result of the redevelopment project during a year that are in excess of the number of equivalent employees during the year immediately prior to the year that a redevelopment plan is adopted; and

(29) Occupation tax means a tax imposed under section 18-2142.02.

Source: Laws 1951, c. 224, § 3, p. 797; R.R.S.1943, § 14-1603; Laws 1957, c. 52, § 4, p. 249; Laws 1961, c. 61, § 3, p. 227; R.R.S.1943, § 19-2603; Laws 1965, c. 74, § 3, p. 303; Laws 1969, c. 106, § 2, p. 488; Laws 1973, LB 299, § 3; Laws 1979, LB 158, § 2; Laws 1980, LB 986, § 2; Laws 1984, LB 1084, § 2; Laws 1993, LB 121, § 143; Laws 1997, LB 875, § 5; Laws 2007, LB562, § 2. Effective date September 1, 2007.

18-2107 Authority; powers and duties. An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Community Development Law and sections 18-2147 to 18-2151, including the power:

(1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with the Community Development Law;

(2) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the city and to undertake and carry out redevelopment projects within its area of operation;

(3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a redevelopment project; and, notwithstanding anything to the contrary contained in the Community Development Law or any other provision of law, to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project provisions to fulfill such federally imposed conditions as it may deem reasonable and appropriate;

(4) Within its area of operation, to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear, or prepare for redevelopment any such property; to sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the authority may deem necessary to prevent a recurrence of substandard and blighted areas or to effectuate the purposes of the Community Development Law; to make any of the covenants, restrictions, or conditions of the foregoing contracts covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money, issue bonds, and provide security for loans or bonds; to establish a revolving loan fund; to insure or provide for the insurance of any real or personal property or the operation of the authority against any risks or hazards, including the power to pay premiums on any such insurance; to enter into any contracts necessary to effectuate the purposes of the Community Development Law; and to provide

grants, loans, or other means of financing to public or private parties in order to accomplish the rehabilitation or redevelopment in accordance with a redevelopment plan. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies shall restrict an authority exercising powers hereunder, in such functions, unless the Legislature shall specifically so state;

(5) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control; and to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;

(6) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or bequests, for purposes of the Community Development Law, to give such security as may be required, and to enter into and carry out contracts in connection therewith; and notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of the Community Development Law;

(7) Acting through one or more members of an authority or other persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority or excused from attendance; and to make available to appropriate agencies or public officials, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, demolishing unsafe or insanitary structures, or eliminating conditions of blight within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals, or welfare;

(8) Within its area of operation, to make or have made all surveys, appraisals, studies, and plans, but not including the preparation of a general plan for the community, necessary to the carrying out of the purposes of the Community Development Law and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;

(9) To prepare plans and provide reasonable assistance for the relocation of families, business concerns, and others displaced from a redevelopment project area to permit the carrying out of the redevelopment project to the extent essential for acquiring possession of and clearing such area or parts thereof; and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or

compensation is not otherwise made, including the making of such payments financed by the federal government;

(10) To make such expenditures as may be necessary to carry out the purposes of the Community Development Law; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;

(11) To certify on or before September 20 of each year to the governing body of the city the amount of tax to be levied for the succeeding fiscal year for community redevelopment purposes, not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city, which levy is subject to allocation under section 77-3443 on and after July 1, 1998. The governing body shall levy and collect the taxes so certified at the same time and in the same manner as other city taxes are levied and collected, and the proceeds of such taxes, when due and as collected, shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited. Such proceeds shall be employed to assist in the defraying of any expenses of redevelopment plans and projects, including the payment of principal and interest on any bonds issued to pay the costs of any such plans and projects;

(12) To exercise all or any part or combination of powers granted in this section;

(13) To plan, undertake, and carry out neighborhood development programs consisting of redevelopment project undertakings and activities in one or more community redevelopment areas which are planned and carried out on the basis of annual increments in accordance with the Community Development Law and sections 18-2145 and 18-2146 for planning and carrying out redevelopment projects; and

(14) To agree with the governing body of the city for the imposition of an occupation tax for an enhanced employment area.

Source: Laws 1951, c. 224, § 5, p. 801; R.R.S.1943, § 14-1607; Laws 1957, c. 52, § 7, p. 253; Laws 1961, c. 61, § 6, p. 232; R.R.S.1943, § 19-2607; Laws 1969, c. 106, § 3, p. 491; Laws 1979, LB 158, § 3; Laws 1979, LB 187, § 79; Laws 1980, LB 986, § 3; Laws 1985, LB 52, § 1; Laws 1992, LB 1063, § 11; Laws 1992, Second Spec. Sess., LB 1, § 11; Laws 1993, LB 734, § 28; Laws 1995, LB 452, § 5; Laws 1997, LB 269, § 20; Laws 1997, LB 875, § 7; Laws 2007, LB562, § 3.
Effective date September 1, 2007.

18-2111 Plan; who may prepare; contents. The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to: (1) The boundaries of the redevelopment project area, with a map showing the existing uses and condition of the real property therein; (2) a land-use plan showing proposed uses of the area; (3) information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment; (4) a statement of the proposed changes, if any, in zoning

ordinances or maps, street layouts, street levels or grades, or building codes and ordinances; (5) a site plan of the area; and (6) a statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment. Any redevelopment plan may include a proposal for the designation of an enhanced employment area.

Source: Laws 1951, c. 224, § 6(4), p. 805; R.R.S.1943, § 14-1611; R.R.S.1943, § 19-2611; Laws 2007, LB562, § 4.
Effective date September 1, 2007.

18-2116 Plan; approval; findings. (1) Following such hearing, the governing body may approve a redevelopment plan if (a) it finds that the plan is feasible and in conformity with the general plan for the development of the city as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Community Development Law and (b) it finds that, if the plan uses funds authorized in section 18-2147, (i) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing, (ii) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and (iii) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

(2) In connection with the approval of any redevelopment plan which includes the designation of an enhanced employment area, the governing body may approve the redevelopment plan if it determines that any new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been

employed at least six months. In making such determination, the governing body may rely upon written undertakings provided by any redeveloper in connection with application for approval of the redevelopment plan.

Source: Laws 1951, c. 224, § 6(9), p. 807; R.R.S.1943, § 14-1616; Laws 1957, c. 52, § 11, p. 258; R.R.S.1943, § 19-2616; Laws 1997, LB 875, § 11; Laws 2007, LB562, § 5.
Effective date September 1, 2007.

18-2119 Redevelopment contract proposal; notice; considerations; acceptance; disposal of real property; contract relating to real estate within an enhanced employment area; recordation. (1) An authority shall, by public notice by publication once each week for two consecutive weeks in a legal newspaper having a general circulation in the city, prior to the consideration of any redevelopment contract proposal relating to real estate owned or to be owned by the authority, invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area, and shall state that such further information as is available may be obtained at the office of the authority. The authority shall consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of the Community Development Law if the authority has, not less than thirty days prior thereto, notified the governing body in writing of its intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of section 18-2118 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such redevelopment contract. In its discretion, the authority may, without regard to the foregoing provisions of this section, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of section 18-2118.

(2) In the case of any real estate owned by a redeveloper, the authority may enter into a redevelopment contract providing for such undertakings as the authority shall determine appropriate. Any such redevelopment contract relating to real estate within an enhanced employment area shall include a statement of the redeveloper's consent with respect to the designation of the area as an enhanced employment area, shall be recorded with respect to the real estate owned by the redeveloper, and shall be binding upon all future owners of such real estate.

Source: Laws 1951, c. 224, § 7(2), p. 809; R.R.S.1943, § 14-1619; R.R.S.1943, § 19-2619; Laws 2007, LB562, § 6.
Effective date September 1, 2007.

18-2130 Bonds; authority; powers. In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or

obligations, an authority, in addition to its other powers, shall have power: (1) To pledge all or any part of its gross or net rents, fees, or revenue to which its right then exists or may thereafter come into existence; (2) to mortgage all or any part of its real or personal property, then owned or thereafter acquired; (3) to covenant against pledging all or any part of its rents, fees, and revenue, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence, or against permitting or suffering any lien on such revenue or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any redevelopment project, or any part thereof; and to covenant as to what other or additional debts or obligations may be incurred by it; (4) to covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof; (5) to covenant, subject to the limitations contained in the Community Development Law, as to the amount of revenue to be raised each year or other period of time by rents, fees, and other revenue, and as to the use and disposition to be made thereof; to establish or to authorize the establishment of special funds for money held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the money held in such funds; (6) to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; (7) to covenant as to the use, maintenance, and replacement of any or all of its real or personal property, the insurance to be carried thereon, and the use and disposition of insurance money, and to warrant its title to such property; (8) to covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived; (9) to vest in any obligees of the authority the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a default by the authority, to take possession of and use, operate, and manage any redevelopment project or any part thereof, title to which is in the authority, or any funds connected therewith, and to collect the rents and revenue arising therefrom and to dispose of such money in accordance with the agreement of the authority with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof; and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; (10) to pledge all of the revenue from any occupation tax received or to be received with respect to any enhanced employment area; and (11) to exercise all or any part or combination of the powers herein granted; to make such covenants, other than and in addition to the covenants herein expressly

authorized, and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of the authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

Source: Laws 1951, c. 224, § 11(1), p. 813; R.R.S.1943, § 14-1630; R.R.S.1943, § 19-2630; Laws 2007, LB562, § 7.
Effective date September 1, 2007.

18-2142.02 Enhanced employment area; redevelopment project; levy of general business occupation tax authorized; governing body; powers. A city may levy a general business occupation tax upon the businesses and users of space within an enhanced employment area for the purpose of paying all or any part of the costs and expenses of any redevelopment project within such enhanced employment area. For purposes of the tax imposed under this section, the governing body may make a reasonable classification of businesses, users of space, or kinds of transactions. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any such occupation tax agreed to by the authority and the city shall remain in effect so long as the authority has bonds outstanding which have been issued stating such occupation tax as an available source for payment.

Source: Laws 2007, LB562, § 8.
Effective date September 1, 2007.

18-2142.03 Enhanced employment area; use of eminent domain prohibited. Eminent domain shall not be used to acquire property that will be transferred to a private party in the enhanced employment area.

Source: Laws 2007, LB562, § 9.
Effective date September 1, 2007.

18-2142.04 Enhanced employment area; authorized work within area; levy of general business occupation tax authorized; governing body; powers; revenue bonds authorized; terms and conditions. (1) For purposes of this section:

(a) Authorized work means the performance of any one or more of the following purposes within an enhanced employment area designated pursuant to this section:

(i) The acquisition, construction, maintenance, and operation of public offstreet parking facilities for the benefit of the enhanced employment area;

(ii) Improvement of any public place or facility in the enhanced employment area, including landscaping, physical improvements for decoration or security purposes, and plantings;

(iii) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and

pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements;

(iv) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the enhanced employment area;

(v) Creation and implementation of a plan for improving the general architectural design of public areas in the enhanced employment area;

(vi) The development of any public activities and promotion of public events, including the management, promotion, and advocacy of retail trade activities or other promotional activities, in the enhanced employment area;

(vii) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Community Development Law;

(viii) Any other project or undertaking for the betterment of the public facilities in the enhanced employment area, whether the project is capital or noncapital in nature;

(ix) Enforcement of parking regulations and the provision of security within the enhanced employment area; or

(x) Employing or contracting for personnel, including administrators for any improvement program under the Community Development Law, and providing for any service as may be necessary or proper to carry out the purposes of the Community Development Law;

(b) Employee means a person employed at a business located within an enhanced employment area; and

(c) Number of new employees means the number of equivalent employees that are employed at a business located within an enhanced employment area designated pursuant to this section during a year that are in excess of the number of equivalent employees during the year immediately prior to the year the enhanced employment area was designated pursuant to this section.

(2) If an area is not blighted or substandard, a city may designate an area as an enhanced employment area if the governing body determines that new investment within such enhanced employment area will result in at least (a) two new employees and new investment of one hundred twenty-five thousand dollars in counties with fewer than fifteen thousand inhabitants, (b) five new employees and new investment of two hundred fifty thousand dollars in counties with at least fifteen thousand inhabitants but fewer than twenty-five thousand inhabitants, (c) ten new employees and new investment of five hundred thousand dollars in counties with at least twenty-five thousand inhabitants but fewer than fifty thousand inhabitants, (d) fifteen new employees and new investment of one million dollars in counties with at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, (e) twenty new employees and new investment of one million five hundred thousand dollars in counties with at least one hundred thousand inhabitants but fewer than two hundred thousand inhabitants, (f) twenty-five new employees and new investment of two million dollars in counties with

at least two hundred thousand inhabitants but fewer than four hundred thousand inhabitants, or (g) thirty new employees and new investment of three million dollars in counties with at least four hundred thousand inhabitants. Any business that has one hundred thirty-five thousand square feet or more and annual gross sales of ten million dollars or more shall provide an employer-provided health benefit of at least three thousand dollars annually to all new employees who are working thirty hours per week or more on average and have been employed at least six months. In making such determination, the governing body may rely upon written undertakings provided by any owner of property within such area.

(3) Upon designation of an enhanced employment area under this section, a city may levy a general business occupation tax upon the businesses and users of space within such enhanced employment area for the purpose of paying all or any part of the costs and expenses of authorized work within such enhanced employment area. For purposes of the tax imposed under this section, the governing body may make a reasonable classification of businesses, users of space, or kinds of transactions. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the governing body shall by ordinance determine to produce the required revenue. The governing body may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance. Any occupation tax levied by the city under this section shall remain in effect so long as the city has bonds outstanding which have been issued under the authority of this section and are secured by such occupation tax or that state such occupation tax as an available source for payment. The total amount of occupation taxes levied shall not exceed the total costs and expenses of the authorized work including the total debt service requirements of any bonds the proceeds of which are expended for or allocated to such authorized work. The assessments or taxes levied must be specified by ordinance and the proceeds shall not be used for any purpose other than the making of such improvements and for the repayment of bonds issued in whole or in part for the financing of such improvements. The authority to levy the general business occupation tax contained in this section and the authority to issue bonds secured by or payable from such occupation tax shall be independent of and separate from any occupation tax referenced in section 18-2103.

(4) A city may issue revenue bonds for the purpose of defraying the cost of authorized work and to secure the payment of such bonds with the occupation tax revenue described in this section. Such revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenue available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary. The following shall apply to any such bonds:

(a) Such bonds shall be limited obligations of the city. Bonds and interest on such bonds, issued under the authority of this section, shall not constitute nor give rise to a pecuniary liability of the city or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds;

(b) Such bonds may (i) be executed and delivered at any time and from time to time, (ii) be in such form and denominations, (iii) be of such tenor, (iv) be payable in such installments and at such time or times not exceeding twenty years from their date, (v) be payable at such place or places, (vi) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (vii) be redeemable prior to maturity, with or without premium, and (viii) contain such provisions as shall be deemed in the best interest of the city and provided for in the proceedings of the governing body under which the bonds shall be authorized to be issued;

(c) The authorization, terms, issuance, execution, or delivery of such bonds shall not be subject to sections 10-101 to 10-126; and

(d) Such bonds may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The city may pay all expenses, premiums, and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale, and issuance thereof from the proceeds or the sale of the bonds or from the revenue of the occupation tax described in this section.

Source: Laws 2007, LB562, § 10.
Effective date September 1, 2007.

ARTICLE 24

MUNICIPAL COOPERATIVE FINANCING

Section.

18-2410 Municipality, defined. Municipality shall mean (1) any city or village incorporated under the laws of this state, any equivalent entity incorporated under the laws of another state, or any separate municipal utility which has autonomous control and was established by such a city, village, or equivalent entity or by the citizens thereof for the purpose of providing electric energy for such municipality or (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state.

Source: Laws 1981, LB 132, § 10; Laws 1987, LB 324, § 3; Laws 2003, LB 165, § 7; Laws 2007, LB199, § 1.
Effective date September 1, 2007.

18-2420 Creation of agency; procedure; board of directors; appointment. The governing body of each of the municipalities participating in the creation of such agency shall by appropriate action by ordinance or resolution determine that there is a need for such agency and set forth the names of the proposed participating municipalities of the agency. Such an action may be taken by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance or passage of a resolution as provided in this section, the mayor, in the case of a city, the chairperson of the board of trustees, in the case of a village, or the chairperson of the governing body, of each of the proposed participating municipalities, with the approval of the respective governing body, shall appoint a director who shall be an elector of the municipality for which he or she acts as director. The directors shall constitute the board in which shall be vested all powers of the agency.

Source: Laws 1981, LB 132, § 20; Laws 2007, LB199, § 2.
Effective date September 1, 2007.

18-2422 Projects other than power projects; directors; file certificate; contents. The directors shall file with the Secretary of State a certificate signed by them setting forth (1) the names of all the proposed participating municipalities, (2) the name and residence of each of the directors so far as known to them, (3) a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, (4) a certified copy of the proceedings of each municipality evidencing the director's right to office, and (5) the name of the agency. The certificate shall be subscribed and sworn to by such directors before an officer or officers authorized by the laws of the state to administer and certify oaths.

Source: Laws 1981, LB 132, § 22; Laws 2007, LB199, § 3.
Effective date September 1, 2007.

18-2425 Projects other than power projects; participation of additional municipalities; procedure. After the creation of an agency, any other municipality may become a participating municipality therein upon (1) application to such agency, (2) the adoption of an ordinance or passage of a resolution by the governing body of the municipality setting forth the determination prescribed in section 18-2420 and authorizing such municipality to become a participating municipality, and (3) at least a majority vote of the directors, except that an agency's bylaws may require a greater percentage of approval for such authorization. Thereupon such municipality shall become a participating municipality

entitled to appoint a director or directors of such agency in the manner prescribed by section 18-2420 and to otherwise participate in such agency to the same extent as if such municipality had participated in the creation of the agency. Upon the filing with the Secretary of State of certified copies of the ordinances and resolutions described in this section, the Secretary of State shall issue an amended certificate of incorporation setting forth the names of the participating municipalities.

Source: Laws 1981, LB 132, § 25; Laws 2007, LB199, § 4.
Effective date September 1, 2007.

18-2427 Power projects; creation of agency; petition; contents. Upon adoption of ordinances or resolutions in accordance with section 18-2420, a petition shall be addressed to the Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 18-2426 to 18-2434, subject to approval by the Nebraska Power Review Board. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Source: Laws 1981, LB 132, § 27; Laws 1981, LB 181, § 57; Laws 2003, LB 165, § 8; Laws 2007, LB199, § 5.
Effective date September 1, 2007.

18-2436 Directors; number; voting; quorum; meetings. Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the bylaws approved by each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may cast. Unless the bylaws of the agency shall require a larger number, a quorum of the board shall be constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's

directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the bylaws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the bylaws. Such meetings may be held by any means permitted by the Open Meetings Act.

Source: Laws 1981, LB 132, § 36; Laws 2007, LB199, § 6.
Effective date September 1, 2007.

Cross Reference

Open Meetings Act, see section 84-1407.

18-2438 Board; create committees; powers; meetings. The board of an agency may create an executive committee the composition of which shall be set forth in the bylaws of the agency. The executive committee shall have and exercise the power and authority of the board during intervals between the board's meetings in accordance with the board's bylaws, rules, motions, or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the agency. The board may also create one or more committees to which the board may delegate such powers and duties as the board shall specify. In no event shall any committee be empowered to authorize the issuance of bonds. The membership and voting requirements for action by a committee shall be specified by the board. An agency which contracts with municipalities outside the State of Nebraska may hold meetings outside the State of Nebraska if such meetings are held only in such contracting municipalities. Meetings of any committee which is a public body for purposes of the Open Meetings Act may be held by any means permitted by the act.

Source: Laws 1981, LB 132, § 38; Laws 1984, LB 686, § 3; Laws 1987, LB 324, § 4; Laws 2001, LB 250, § 1; Laws 2007, LB199, § 7.
Effective date September 1, 2007.

Cross Reference

Open Meetings Act, see section 84-1407.

18-2439 Agency; dissolution; withdrawal of municipality; outstanding bonds, how treated; assets, how distributed. An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance or resolution setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance or resolution, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the payment of any outstanding bonds or interest thereon. In the

event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable.

Source: Laws 1981, LB 132, § 39; Laws 2007, LB199, § 8.
Effective date September 1, 2007.

18-2442 Construction and other contracts; cost estimate; sealed bids; when; exceptions. (1) An agency shall cause estimates of the costs to be made by some competent engineer or engineers before the agency enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the agency, of any:

(i) Power project, power plant, or system;

(ii) Irrigation works; or

(iii) Part or section of a project, plant, system, or works described in subdivision (i) or (ii) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in a project, plant, system, or works described in subdivision (1)(a) of this section.

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

(3)(a) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 relating to sealed bids shall not apply to contracts entered into by an agency in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or sections 18-2443 and 18-2444 if:

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

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

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

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation

therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects, plants, systems, or works described in subdivision (1)(a) of this section when the contract does not include onsite labor for the installation thereof if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1981, LB 132, § 42; Laws 1999, LB 566, § 1; Laws 2007, LB636, § 5.
Effective date September 1, 2007.

CHAPTER 20
CIVIL RIGHTS

Article.

1. Individual Rights.
   (a) General Provisions. 20-113.

ARTICLE 1

INDIVIDUAL RIGHTS

(a) GENERAL PROVISIONS

Section.

20-113. Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.

(a) GENERAL PROVISIONS

20-113 Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when. Any incorporated city may enact ordinances and any county may adopt resolutions which are substantially equivalent to the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and 48-1219 to 48-1227 or which are more comprehensive than such acts and sections in the protection of civil rights. No such ordinance or resolution shall place a duty or liability on any person, other than an employer, employment agency, or labor organization, for acts similar to those prohibited by section 48-1115. Such ordinance or resolution may include authority for a local agency to seek an award of damages or other equitable relief on behalf of the complainant by the filing of a petition in the district court in the county with appropriate jurisdiction. The local agency shall have within its authority jurisdiction substantially equivalent to or more comprehensive than the Equal Opportunity Commission or other enforcement agencies provided under such acts and sections and shall have authority to order backpay and other equitable relief or to enforce such orders or relief in the district court with appropriate jurisdiction. Certified copies of such ordinances or resolutions shall be transmitted to the commission. When the commission determines that any such city or county has enacted an ordinance or adopted a resolution that is substantially equivalent to such acts and sections or is more comprehensive than such acts and sections in the protection of civil rights and has established a local agency to administer such ordinance or resolution, the commission may thereafter refer all complaints arising in such city or county to the appropriate local agency. All complaints arising within a city shall be referred to the appropriate agency in such city when both the city and the county in which the city is located have established agencies pursuant to this section. When the commission refers a complaint to a local agency, it shall take no further action on such complaint if the local agency proceeds promptly to handle such complaint pursuant to the local ordinance

or resolution. If the commission determines that a local agency is not handling a complaint with reasonable promptness or that the protection of the rights of the parties or the interests of justice require such action, the commission may regain jurisdiction of the complaint and proceed to handle it in the same manner as other complaints which are not referred to local agencies. In cases of conflict between this section and section 20-332, for complaints subject to the Nebraska Fair Housing Act, section 20-332 shall control.

Any club which has been issued a license by the Nebraska Liquor Control Commission to sell, serve, or dispense alcoholic liquor shall have that license revoked if the club discriminates because of race, color, religion, sex, familial status as defined in section 20-311, handicap as defined in section 20-313, or national origin in the sale, serving, or dispensing of alcoholic liquor to any person who is a guest of a member of such club. The procedure for revocation shall be as prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

Source: Laws 1969, c. 120, § 9, p. 544; Laws 1974, LB 681, § 1; Laws 1979, LB 438, § 2; Laws 1991, LB 344, § 1; Laws 1991, LB 825, § 46; Laws 2007, LB265, § 2.
Operative date September 1, 2007.

Cross Reference

Age Discrimination in Employment Act, see section 48-1001.
Nebraska Fair Employment Practice Act, see section 48-1125.
Nebraska Fair Housing Act, see section 20-301.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

Article.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section.

(a) CREDIT UNION ACT

21-1739 Repealed. Laws 2007, LB 124, § 78.

21-17,112 Conversion from federal to state credit union. (1) A federal credit union organized under the Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all the requirements to become a state credit union organized under the Credit Union Act may, with the approval of the department and in compliance with the applicable law under which it was organized, be converted into a state credit union organized under the Credit Union Act. The required articles of association may be executed by a majority of the board of directors of the converting credit union and presented to the department for appropriate examination and approval. A majority of the directors, after executing the articles of association in duplicate, may execute all other papers, including the adoption of bylaws for the general government of the credit union consistent with the Credit Union Act, and do whatever may be required to complete its conversion.

(2) The board of directors of the converting credit union may continue to be directors of the credit union. If the director approves the articles of association as presented by the board of directors, the director shall notify the board of directors of his or her decision and shall immediately issue a certificate of approval attached to the duplicate articles of association and return it to the credit union. The certificate shall indicate that the laws of this state have been complied with and that the credit union and all its members, officials, and employees shall have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized under the Credit Union Act.

(3) The approval of the department shall be based on an examination of the credit union and the proceedings had by its board of directors and members with respect to conversion. A conversion shall not be made to defeat or defraud any of the creditors of the credit union. The expenses of an examination, which shall be computed in accordance with sections 8-605 and 8-606, shall be paid by the credit union.

(4) When the conversion becomes effective, all property of the converted credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was previously possessed, held, and enjoyed by it. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if it had after the conversion assumed the trust or relation and obligation and liabilities connected with the trust or relation.

Source: Laws 1996, LB 948, § 112; Laws 1997, LB 137, § 18; Laws 2007, LB124, § 20.
Operative date September 1, 2007.

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception. Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2007, 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.
Operative date March 20, 2007.

ARTICLE 20

BUSINESS CORPORATION ACT

(a) GENERAL PROVISIONS

Section.

(h) DIRECTORS AND OFFICERS

(a) GENERAL PROVISIONS

21-2005 Fees. (1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be $300.

(c) Application for use of indistinguishable name...$25

(d) Application for reserved name...$25

(e) Notice of transfer of reserved name...$25

(f) Application for registered name...$25

(g) Application for renewal of registered name...$25

(h) Corporation's statement of change of registered agent or registered office or both...$25

(i) Agent's statement of change of registered office for each affected corporation...$25 not to exceed a total of...$1,000

(j) Agent's statement of resignation...No fee

(k) Amendment of articles of incorporation...$25

(l) Restatement of articles of incorporation...$25 with amendment of articles...$25

(m) Articles of merger or share exchange...$25

(n) Articles of dissolution...$45

(o) Articles of revocation of dissolution...$25

(p) Certificate of administrative dissolution...No fee

(q) Application for reinstatement...$25

(r) Certificate of reinstatement...No fee

(s) Certificate of judicial dissolution...No fee

(t) Application for certificate of authority...$130

(u) Application for amended certificate of authority...$25

(v) Application for certificate of withdrawal...$25

(w) Certificate of revocation of authority to transact business...No fee

(x) Articles of correction...$25

(y) Application for certificate of existence or authorization...$25

(z) Any other document required or permitted to be filed by the Business Corporation Act...$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1.
Effective date September 1, 2007.

(h) DIRECTORS AND OFFICERS

21-2095 Standards of conduct for directors. (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

A director may, but need not, in considering the best interests of the corporation, consider, among other things, the effects of any action on employees, suppliers, creditors, and customers of the corporation and communities in which offices or other facilities of the corporation are located.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 1995, LB 109, § 95; Laws 2007, LB191, § 1.
Effective date March 8, 2007.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

Part 1 - GENERAL PROVISIONS

Part 2 - FILING AND REPORTS

Part 3 - FORMATION AND ARTICLES OF ORGANIZATION

Part 4 - MEMBERS

Part 1 - GENERAL PROVISIONS

21-2901 Act, how cited. Sections 21-2901 to 21-29,134 shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 1.
Operative date January 1, 2008.

21-2902 Legislative power to amend or repeal. The Legislature shall have the power to amend or repeal all or part of the Nebraska Limited Cooperative Association Act at any time and all domestic and foreign limited cooperative associations subject to the act shall be governed by the amendment or repeal.

Source: Laws 2007, LB368, § 2.
Operative date January 1, 2008.

21-2903 Terms, defined. For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member in the member's capacity as a member or to a transferee because of a right owned by the transferee;

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a limited cooperative association, a general partnership, a limited liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means a person admitted as a member that is not required to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

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

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Source: Laws 2007, LB368, § 3.
Operative date January 1, 2008.

21-2904 Nature of limited cooperative association. (1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized under the Nebraska Limited Cooperative Association Act for any lawful purpose, regardless of whether or not for profit, except for the purpose of being a financial institution which is subject to supervision by the Department of Banking and Finance under section 8-102 or which would be subject to supervision by the department if chartered by the State of Nebraska or the business of an insurer as described in section 44-102.

(3) A limited cooperative association has a perpetual duration, unless otherwise set forth in its articles of organization or bylaws.

Source: Laws 2007, LB368, § 4.
Operative date January 1, 2008.

21-2905 Powers. (1) Except as otherwise provided in the Nebraska Limited Cooperative Association Act, a limited cooperative association has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a member for harm caused to the limited cooperative association by a violation of the articles of organization or bylaws of the limited cooperative association or violation of a duty to the limited cooperative association.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, a limited cooperative association shall not issue bonds, debentures, or other evidence of indebtedness to a member unless, prior to issuance, the association provides the member with a written disclosure statement that includes a conspicuous notice that the money is not insured or guaranteed by an agency or instrumentality of the United States Government and that the investment may lose value.

(b) A limited cooperative association need not provide the written disclosure statement described in subdivision (a) of this subsection to any member that is described in subdivision (8) of section 8-1111.

(c) Any extension of credit by a limited cooperative association to a member in connection with the sale of the association's goods or services shall not:

(i) Exceed nine months from the date of such sale; or

(ii) Be secured by real property, except that an extension of credit in default at the end of the original term may be extended or renewed for successive periods not exceeding nine months in length and may be secured by real property at the end of the original term or any extension or renewal thereof.

(d) No new money may be advanced by an association in connection with the extension or renewal of an extension of credit granted under subdivision (2)(c) of this section.

Source: Laws 2007, LB368, § 5.
Operative date January 1, 2008.

21-2906 Name. (1) The name of a limited cooperative association must contain the words "limited cooperative association" or their abbreviation.

(2) The name of a limited cooperative association shall not be the same as or deceptively similar to:

(a) The name of any entity organized or authorized to transact business in this state;

(b) A name reserved or registered under section 21-2907 or 21-2908; and

(c) A fictitious name approved for a foreign limited cooperative association authorized to transact business in this state.

Source: Laws 2007, LB368, § 6.
Operative date January 1, 2008.

21-2907 Reservation of name. (1) A person may reserve the exclusive use of the name of a limited cooperative association, including a fictitious name for a foreign limited cooperative association whose name is unavailable, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(2) The owner of a name reserved for a limited cooperative association may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer which states the name and address of the transferee.

Source: Laws 2007, LB368, § 7.
Operative date January 1, 2008.

21-2908 Foreign limited cooperative association; name. (1) A foreign limited cooperative association may register its name pursuant to section 21-2907 if the name is not the same as or deceptively similar to names that are unavailable under section 21-2906.

(2) A foreign limited cooperative association may register its name, or its name with any addition required by section 21-29,106, by delivering to the Secretary of State for filing an application:

(a) Setting forth its name, or its name with any addition required by section 21-29,106, the state or country of organization and date of its organization, and a brief description of the nature of the affairs in which it is engaged; and

(b) Accompanied by a certificate of existence or authorization from the state or country of organization.

(3) A foreign limited cooperative association whose registration is effective may qualify as a foreign limited cooperative association under its name or consent in a record to the use of its name by a limited cooperative association later organized under the Nebraska Limited Cooperative Association Act or by a foreign limited cooperative association later authorized to transact business in this state. The registration of the name terminates when the limited cooperative association is organized or the foreign limited cooperative association qualifies or consents to the qualification of another foreign limited cooperative association under the registered name.

Source: Laws 2007, LB368, § 8.
Operative date January 1, 2008.

21-2909 Use of terms or abbreviation. The use of the terms "cooperative or nonstock cooperative" or an abbreviation of the terms under the Nebraska Limited Cooperative Association Act is not a violation of the provisions restricting the use of the terms under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339, however, use of the term "cooperative" by a limited cooperative association shall not be construed under any other law to qualify a limited cooperative association as a cooperative organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339.

Source: Laws 2007, LB368, § 9.
Operative date January 1, 2008.

Cross Reference

Nonstock Cooperative Marketing Act, see section 21-1401.

21-2910 Required information. A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and

(10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Source: Laws 2007, LB368, § 10.
Operative date January 1, 2008.

21-2911 Business transactions of member with limited cooperative association. A member may lend money to and transact other business with the limited cooperative association and has the same rights and obligations with respect to the loan or other transaction as a person that is not a member subject to the articles of organization or bylaws or a specific contract relating to the transaction.

Source: Laws 2007, LB368, § 11.
Operative date January 1, 2008.

21-2912 Dual capacity. A person may be both a patron member and an investor member. A person that is both a patron member and an investor member has the rights, powers, duties, and obligations provided by the Nebraska Limited Cooperative Association Act and the articles of organization or bylaws in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under the act and the articles of organization or bylaws governing investor members.

Source: Laws 2007, LB368, § 12.
Operative date January 1, 2008.

21-2913 Designated office and agent for service of process. (1) A limited cooperative association and a foreign limited cooperative association shall designate and continuously maintain in this state:

(a) An office, which need not be a place of its activity in this state; and

(b) An agent for service of process.

(2) An agent for service of process of a limited cooperative association or foreign limited cooperative association shall be an individual who is a resident of this state or other person authorized to do business in this state.

Source: Laws 2007, LB368, § 13.
Operative date January 1, 2008.

21-2914 Change of designated office or agent for service of process. (1) In order to change its registered office, its agent for service of process, or the address of its agent for service of process, a limited cooperative association or a foreign limited cooperative association shall deliver to the Secretary of State for filing a statement of change containing:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of its current registered office;

(c) If the current registered office is to be changed, the street and mailing addresses of the new registered office;

(d) The name and street and mailing addresses of its current agent for service of process; and

(e) If the current agent for service of process or an address of the agent is to be changed, the new information.

(2) A statement of change is effective when filed with the Secretary of State.

Source: Laws 2007, LB368, § 14.
Operative date January 1, 2008.

21-2915 Resignation of agent for service of process. (1) To resign as an agent for service of process of a limited cooperative association or a foreign limited cooperative association, the agent shall deliver to the Secretary of State for filing a statement of resignation containing the name of the limited cooperative association or foreign limited cooperative association.

(2) After receiving a statement of resignation, the Secretary of State shall file it and mail a copy to the principal office of the limited cooperative association or foreign limited cooperative association and another copy to the principal office if the address of the principal office appears in the records of the Secretary of State and is different from the address of the registered office.

(3) An agency for service of process terminates thirty days after the Secretary of State files the statement of resignation.

Source: Laws 2007, LB368, § 15.
Operative date January 1, 2008.

21-2916 Service of process. (1) An agent for service of process appointed by a limited cooperative association or a foreign limited cooperative association is an agent of the limited cooperative association or foreign limited cooperative association for service of any process, notice, or demand required or permitted by law to be served upon the limited cooperative association or foreign limited cooperative association.

(2)(a) If a limited cooperative association or a foreign limited cooperative association has no agent for service of process or the agent cannot with reasonable diligence be served the

limited cooperative association may be served by registered or certified mail, return receipt requested, addressed to the limited cooperative association at its principal office. Service shall be perfected under this subsection at the earliest of:

(i) The date the limited cooperative association receives the mail;

(ii) The date shown on the return receipt, if signed on behalf of the limited cooperative association; or

(iii) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(b) This subsection shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited cooperative association in any other manner now or hereafter permitted by law.

Source: Laws 2007, LB368, § 16.
Operative date January 1, 2008.

Part 2 - FILING AND REPORTS

21-2917 Signing of records to be delivered for filing to the Secretary of State. Records delivered to the Secretary of State for filing pursuant to the Nebraska Limited Cooperative Association Act shall be signed in the following manner:

(1) The initial articles of organization shall be signed by at least one organizer;

(2) A notice of cancellation under section 21-29,108 shall be signed by each organizer that signed the initial articles of organization;

(3) Except as otherwise provided in this subsection, a record signed on behalf of an existing limited cooperative association shall be signed by an officer or authorized representative; and

(4) A record filed on behalf of a dissolved limited cooperative association by a person winding up the activities under section 21-2989 or a person appointed under such section to wind up those activities.

Source: Laws 2007, LB368, § 17.
Operative date January 1, 2008.

21-2918 Signing and filing of records pursuant to judicial order. (1) If a person required by the Nebraska Limited Cooperative Association Act to sign or deliver a record to the Secretary of State for filing does not do so, any other aggrieved person may petition the district court of Lancaster County to order:

(a) The person to sign the record and the person to deliver the record to the Secretary of State for filing; or

(b) The Secretary of State to file the record unsigned.

(2) If an aggrieved person under subsection (1) of this section is not the limited cooperative association or foreign limited cooperative association to which the record pertains, the aggrieved person shall make the limited cooperative association or foreign limited cooperative association a party to the action. An aggrieved person under subsection (1) of this section may seek any or all of the remedies provided in such subsection in the same action.

(3) A record filed unsigned pursuant to this section is effective without being signed.

Source: Laws 2007, LB368, § 18.
Operative date January 1, 2008.

21-2919 Delivery to and filing of records by Secretary of State; effective time and date. (1) A record authorized to be delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act shall be captioned to describe the record's purpose and be delivered to the Secretary of State in a medium authorized by the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of the act and if all filing fees have been paid the Secretary of State shall file the record and send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in the act, a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Except as otherwise provided in the act, a record filed by the Secretary of State is effective:

(a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) Ninety days after the record is filed.

Source: Laws 2007, LB368, § 19.
Operative date January 1, 2008.

21-2920 Correcting filed record. (1) A limited cooperative association or foreign limited cooperative association may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited cooperative association or foreign limited cooperative association to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction shall not state a delayed effective date and shall:

(a) Describe the record to be corrected, including its filing date, or contain an attached copy of the record as filed;

(b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) Correct the incorrect information or defective signature.

(3) When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to persons relying on the uncorrected record and adversely affected by the correction prior to its correction.

Source: Laws 2007, LB368, § 20.
Operative date January 1, 2008.

21-2921 Liability for false information in filed record. If a record delivered to the Secretary of State for filing under the Nebraska Limited Cooperative Association Act and filed by the Secretary of State contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew the information to be false at the time the record was signed.

Source: Laws 2007, LB368, § 21.
Operative date January 1, 2008.

21-2922 Certificate of good standing or authorization. (1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of existence for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Source: Laws 2007, LB368, § 22.
Operative date January 1, 2008.

21-2923 Biennial report. (1) A limited cooperative association or a foreign limited cooperative association authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(a) The name of the limited cooperative association or foreign limited cooperative association;

(b) The street and mailing addresses of the limited cooperative association's or foreign limited cooperative association's designated office and the name and street and mailing addresses of its agent for service of process in this state;

(c) In the case of a limited cooperative association, the street and mailing addresses of its principal office if different from its designated office; and

(d) In the case of a foreign limited cooperative association, the state or other jurisdiction under whose law the foreign limited cooperative association is formed and any alternative name adopted under section 21-29,106.

(2) Information in the biennial report must be current as of the date the biennial report is delivered to the Secretary of State.

(3) Commencing on January 1, 2009, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited cooperative association files articles of organization or a foreign limited cooperative association becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(4) If a biennial report does not contain the information required in subsection (1) of this section, the Secretary of State shall promptly notify the reporting limited cooperative association or foreign limited cooperative association and return the report for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed biennial report contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the filing, the differing information in the biennial report is considered a statement of change under section 21-2914.

(6) If a limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-2994 to administratively dissolve the limited cooperative association.

(7) If a foreign limited cooperative association fails to file a biennial report under this section, the Secretary of State may proceed under section 21-29,107 to revoke the certificate of authority of the foreign limited cooperative association.

Source: Laws 2007, LB368, § 23.
Operative date January 1, 2008.

21-2924 Filing fees. The filing fees for records filed under this section with the Secretary of State are governed by section 33-101.

Source: Laws 2007, LB368, § 24.
Operative date January 1, 2008.

Part 3 - FORMATION AND ARTICLES OF ORGANIZATION

21-2925 Organizers. A limited cooperative association may be organized by one or more organizers who need not be members.

Source: Laws 2007, LB368, § 25.
Operative date January 1, 2008.

21-2926 Formation of limited cooperative association; articles of organization. (1) To form a limited cooperative association, articles of organization shall be delivered to the Secretary of State for filing. The articles shall state:

(a) The name of the limited cooperative association;

(b) The purposes for which the limited cooperative association was formed;

(c) The street and mailing addresses of the initial registered office and the name, street, and mailing addresses of the registered agent for service of process;

(d) The name and the street and mailing addresses of each organizer;

(e) The term for which the limited cooperative association is to exist, if other than perpetual;

(f) The number and terms of directors or the method in which the number and terms shall be determined; and

(g) Any additional information required by the Secretary of State.

(2) Articles of organization may contain any other matters deemed relevant by the organizer or organizers.

(3) Unless the articles of organization state a delayed effective date, a limited cooperative association is formed when the Secretary of State receives for filing the articles of organization. If the articles state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, one or more organizers sign and deliver to the Secretary of State for filing a notice of cancellation.

Source: Laws 2007, LB368, § 26.
Operative date January 1, 2008.

21-2927 Organization of limited cooperative association. After the effective date of the articles of organization:

(1) If initial directors are named in the articles of organization, the initial directors shall hold an organizational meeting to appoint officers, adopt initial bylaws, and carry on any other business brought before the meeting; and

(2) If initial directors are not named in the articles of organization, the organizers shall designate the initial directors and call a meeting of them to adopt initial bylaws or carry on any other business necessary and proper to complete the organization of the limited cooperative association.

Source: Laws 2007, LB368, § 27.
Operative date January 1, 2008.

21-2928 Bylaws. (1) The bylaws shall be in a record and, if not stated in the articles of organization, include:

(a) A statement of the capital structure of the limited cooperative association, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each group, class, or other type of member interest, the rights to share in profits or distributions of the limited cooperative association, and the method to admit members;

(b) A statement designating the voting and governance rights, including which members have voting power and any limitations or restrictions on the voting power under sections 21-2939 and 21-2942;

(c) A statement that member interests held by a member are transferable only with the approval of the board of directors or as otherwise provided in the articles of organization or bylaws; and

(d) If investor members are authorized, a statement concerning how profits and losses are apportioned and how distributions are made as between patron members and investor members.

(2) The bylaws of the limited cooperative association may contain any provision for managing and regulating the affairs of the limited cooperative association which is not inconsistent with the articles of organization.

Source: Laws 2007, LB368, § 28.
Operative date January 1, 2008.

Part 4 - MEMBERS

21-2929 Members. In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 29.
Operative date January 1, 2008.

21-2930 Becoming a member. A person becomes a member:

(1) As provided in the articles of organization and bylaws;

(2) As the result of merger or consolidation under section 21-29,122 or 21-29,128; or

(3) With the consent of all the members.

Source: Laws 2007, LB368, § 30.
Operative date January 1, 2008.

21-2931 No right or power as member to bind limited cooperative association. A member does not have the right or power as a member to act for or bind the limited cooperative association.

Source: Laws 2007, LB368, § 31.
Operative date January 1, 2008.

21-2932 No liability as member for limited cooperative association obligations. Unless otherwise provided by the articles of organization, an obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a member. A member is not personally liable, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a member.

Source: Laws 2007, LB368, § 32.
Operative date January 1, 2008.

21-2933 Right of member and former member to information. (1) On ten days' demand, made in a record received by the limited cooperative association, a member may inspect and copy required information under subdivisions (1) through (7) of section 21-2910 during regular business hours in the limited cooperative association's principal office. A demand to inspect and copy records shall be in good faith and for a proper purpose. A member may demand the same information under subdivisions (1) through (7) of section 21-2910 no more than once during a twelve-month period.

(2) On demand, made in a record received by the limited cooperative association, a member may obtain from the limited cooperative association and inspect and copy required information if the demand is just and reasonable. A demand to inspect and copy records is just and reasonable if:

(a) The member seeks the information for a proper purpose reasonably related to the member's interest as a member;

(b) The demand includes a description, with reasonable particularity, of the information sought and the purpose for seeking the information; and

(c) The information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (2)(b) of this section, the limited cooperative association shall inform, in a record, the member that made the demand:

(a) Of what information the limited cooperative association will provide in response to the demand;

(b) Of the reasonable time and place that the limited cooperative association will provide the information; and

(c) That the limited cooperative association will decline to provide any demanded information and the limited cooperative association's reasons for declining.

(4) A person dissociated as a member pursuant to section 21-2982 may inspect and copy required information during regular business hours in the limited cooperative association's principal office if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person complies with this section.

(5) The limited cooperative association shall respond to a demand made pursuant to subsection (4) of this section in the same manner as otherwise provided in this section.

(6) The limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction, the limited cooperative association has the burden of proving reasonableness.

(7) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A member or person dissociated as a member may exercise the rights under this section through an attorney or other agent. A restriction imposed under this section or by the articles of organization or bylaws on a member or person dissociated as a member applies both to the attorney or other agent and to the member or person dissociated as a member.

(9) The rights stated in this section do not extend to a person as transferee but may be exercised by the legal representative of an individual under legal disability who is a member or person dissociated as a member.

Source: Laws 2007, LB368, § 33.
Operative date January 1, 2008.

21-2934 Annual members' meetings. (1) The members of the limited cooperative association shall meet annually as provided in the articles of organization or bylaws or at the direction of the board of directors not inconsistent with the articles of organization or bylaws.

(2) Annual members' meetings may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(3) The board of directors shall report or cause to be reported at the annual members' meeting the business and financial condition as of the close of the most recent fiscal year.

(4) Unless otherwise provided by the articles of organization or bylaws, the board of directors shall designate the presiding officer of the annual members' meeting.

Source: Laws 2007, LB368, § 34.
Operative date January 1, 2008.

21-2935 Special members' meetings. (1) Special members' meetings shall be called:

(a) As provided in the articles of organization or bylaws;

(b) By a majority vote of the board of directors;

(c) By demand in a record signed by members holding at least ten percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or

(d) By demand in a record signed by members holding at least ten percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Source: Laws 2007, LB368, § 35.
Operative date January 1, 2008.

21-2936 Notice of members' meetings. (1) The limited cooperative association shall notify each member of the time, date, and place of any annual or special members' meeting not less than ten nor more than fifty days before the meeting.

(2) Unless the articles of organization or bylaws otherwise provide, notice of an annual members' meeting need not include a description of the purpose or purposes of the meeting.

(3) Notice of a special members' meeting shall include a description of the purpose or purposes of the meeting as contained in the demand under section 21-2935 or as voted upon by the board of directors under such section.

Source: Laws 2007, LB368, § 36.
Operative date January 1, 2008.

21-2937 Waiver of members' meeting notice. (1) A member may waive notice of any meeting of the members either before, during, or after the meeting.

(2) A member's participation in a meeting is waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB368, § 37.
Operative date January 1, 2008.

21-2938 Quorum. Unless the articles of organization or bylaws provide otherwise, ten percent, but not less than five nor more than fifty of the members, need to be present at an annual or special members' meeting to constitute a quorum.

Source: Laws 2007, LB368, § 38.
Operative date January 1, 2008.

21-2939 Voting by patron members. (1) Each patron member has one vote but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If a limited cooperative association has both patron and investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote but the articles of organization or bylaws may reduce the collective voting power of patron members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Source: Laws 2007, LB368, § 39.
Operative date January 1, 2008.

21-2940 Action without a meeting. (1) Unless otherwise provided by the articles of organization or bylaws, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on such action consents to the action in a record.

(2) Consent may be withdrawn by a member in a record at any time before the limited cooperative association receives a consent from each member entitled to vote.

(3) The consent record of any action may specify the effective date or time of the action.

Source: Laws 2007, LB368, § 40.
Operative date January 1, 2008.

21-2941 Determination of voting power of patron member. The articles of organization or bylaws may provide additional voting power be allocated for each patron member for:

(1) Actual, estimated, or potential patronage or any combination thereof;

(2) Equity allocated or held by a patron member in the limited cooperative association; or

(3) Any combination of subdivisions (1) and (2) of this section.

Source: Laws 2007, LB368, § 41.
Operative date January 1, 2008.

21-2942 Voting by investor members. If the articles of organization or bylaws provide for investor members, each investor member has one vote except as otherwise provided by the articles of organization or bylaws.

Source: Laws 2007, LB368, § 42.
Operative date January 1, 2008.

21-2943 Manner of voting. (1) Proxy voting by members is prohibited.

(2) Delegate voting based upon geographical district, group, or class is not voting by proxy under this section.

(3) The articles of organization or bylaws may provide for member voting by secret ballot delivered by mail or other means.

(4) The articles of organization or bylaws may provide for members to attend meetings or conduct members' meetings through the use of any means of communication, if all members attending the meeting can simultaneously communicate with each other during the meeting.

Source: Laws 2007, LB368, § 43.
Operative date January 1, 2008.

21-2944 Districts and delegates; classes of members. (1) The articles of organization or bylaws may provide:

(a) For the formation of districts and the conduct of members' meetings by districts and that elections of directors may be held at district meetings; or

(b) That districts may elect district delegates to represent and vote for the district in annual and special meetings of members.

(2) A delegate selected under subdivision (1)(b) of this section has one vote subject to subsection (3) of this section.

(3) The articles of organization or bylaws may provide additional voting power be allocated to each district, group, or class or delegate for the aggregate of the number of patron members in each district, group, or class as provided under section 21-2941.

Source: Laws 2007, LB368, § 44.
Operative date January 1, 2008.

Part 5 - MEMBER INTEREST

21-2945 Member interest. A member's interest:

(1) Consists of: (a) Governance rights under allocation and distributions; (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Source: Laws 2007, LB368, § 45.
Operative date January 1, 2008.

21-2946 Patron and investor member interests. (1) Subject to subsection (2) of this section, member interests shall be patron member interests.

(2) The articles of organization or bylaws may establish investor member interests.

Source: Laws 2007, LB368, § 46.
Operative date January 1, 2008.

21-2947 Transferability of member interest. (1) Unless otherwise provided in the articles of organization or bylaws and subject to subsection (2) of this section, member interests are not transferable. The terms of the restriction on transferability shall be set forth in the limited cooperative association articles of organization or bylaws, the member records of the limited cooperative association, and shall be conspicuously noted on any certificates evidencing a member's interest.

(2) A member may transfer its financial rights in the limited cooperative association unless the transfer is restricted or prohibited by the articles of organization or bylaws.

(3) The transferee of a member's financial rights has, to the extent transferred, the right to share in the allocation of surplus, profits, or losses and to receive the distributions to the member transferring the interest.

(4) The transferee does not become a member upon transfer of a member's financial rights unless it is admitted as a member by the limited cooperative association.

(5) A limited cooperative association need not give effect to a transfer under this section until the limited cooperative association has notice of the transfer.

(6) A transfer of a member's financial rights in violation of a restriction or prohibition on transfer contained in the articles of organization or bylaws is void.

Source: Laws 2007, LB368, § 47.
Operative date January 1, 2008.

21-2948 Security interest. (1) An investor member or transferee may grant a security interest in financial rights in a limited cooperative association, but not in the governance rights in such association.

(2) A patron member shall not grant a security interest in financial rights or governance rights in a limited cooperative association.

(3) The granting of a security interest in financial rights is not considered a transfer for purposes of section 21-2947. Upon foreclosure of a security interest in financial rights a person obtaining the financial rights shall only obtain financial rights subject to the security interest and shall not obtain any governance rights or other rights with respect to the limited cooperative association.

(4) The limitation of this section to financial rights shall not apply in the case of a member interest that is not subject to a restriction or prohibition on transfer under the articles of organization or bylaws.

Source: Laws 2007, LB368, § 48.
Operative date January 1, 2008.

Part 6 - MARKETING CONTRACTS

21-2949 Marketing contracts; authority. Unless otherwise provided by the articles of organization or bylaws, a limited cooperative association may contract with another party, who need not be a patron member, requiring the other party to:

(1) Sell or deliver for sale or marketing on the person's behalf a specified portion of the other party's agricultural product or specified commodity exclusively to or through the limited cooperative association or any facilities furnished by the limited cooperative association or authorize the limited cooperative association to act for the party in any manner with respect to the product; and

(2) Buy or procure from or through the limited cooperative association or any facilities furnished by the limited cooperative association all or a specified part of the goods or services to be bought or procured by the party or authorize the limited cooperative association to act for the party in any manner in the procurement of goods or the performance of services.

Source: Laws 2007, LB368, § 49.
Operative date January 1, 2008.

21-2950 Marketing contract. (1) The contract may provide for sale of the product or commodity to the limited cooperative association, and, if so, the sale transfers title absolutely to the limited cooperative association except for security interests properly perfected under other law, upon delivery, or at any other specific time expressly provided by the contract.

(2) The contract may authorize the limited cooperative association to grant a security interest in the product or commodity delivered and may provide that the limited cooperative association may sell the product or commodity delivered and pay or distribute the sales price on a pooled or other basis to the other party after deducting the following:

(a) Selling, processing, overhead, and other costs and expenses; and

(b) Reserves for the purposes set forth in subdivision (3)(b) of section 21-2980.

Source: Laws 2007, LB368, § 50.
Operative date January 1, 2008.

21-2951 Duration of marketing contract. A single term of a contract shall not exceed ten years, but may be renewable for additional periods not exceeding five years each, subject to the right of either party not to renew by giving record notice during a period of the current term as specified in the contract.

Source: Laws 2007, LB368, § 51.
Operative date January 1, 2008.

21-2952 Remedies for breach of contract. (1) The contract or articles of organization or bylaws may establish a specific sum of money as liquidated damages to be paid by a patron member to the limited cooperative association. The damages may be a percentage of the value of a specific amount per unit of the products, goods, or services involved by the breach or a fixed sum of money.

(2) If there is a breach or threatened breach of a contract, the limited cooperative association is entitled to an injunction to prevent the breach and continuing breach and to a judgment of specific performance. Pending adjudication of the action, and upon filing sufficient bond, the limited cooperative association is entitled to a temporary restraining order and a preliminary injunction.

(3) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Source: Laws 2007, LB368, § 52.
Operative date January 1, 2008.

Part 7 - DIRECTORS AND OFFICERS

21-2953 Existence and powers of board of directors. (1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Source: Laws 2007, LB368, § 53.
Operative date January 1, 2008.

21-2954 No liability as director for limited cooperative association's obligations. An obligation of a limited cooperative association, whether arising in contract, tort, or otherwise, is not the obligation of a director. A director is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited cooperative association solely by reason of being a director.

Source: Laws 2007, LB368, § 54.
Operative date January 1, 2008.

21-2955 Qualifications of directors and composition of board. (1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director shall be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Source: Laws 2007, LB368, § 55.
Operative date January 1, 2008.

21-2956 Election of directors. (1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) The articles of organization may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) The articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Source: Laws 2007, LB368, § 56.
Operative date January 1, 2008.

21-2957 Term of director. (1) A director's term expires at the annual members' meeting following the director's election unless otherwise provided in the articles of organization or bylaws. The term of a director shall not exceed three years.

(2) Unless otherwise provided in the articles of organization or bylaws, a director may be reelected for subsequent terms.

(3) A director continues to serve as director until a successor director is elected and qualified or until the director is removed, resigns, or dies.

Source: Laws 2007, LB368, § 57.
Operative date January 1, 2008.

21-2958 Resignation of director. (1) A director may resign at any time by giving notice in a record to the limited cooperative association.

(2) A resignation is effective when notice is received by the limited cooperative association unless the notice states a later effective date.

Source: Laws 2007, LB368, § 58.
Operative date January 1, 2008.

21-2959 Removal of director. The members may remove a director only for cause unless the articles of organization or bylaws provide for removal without cause.

Source: Laws 2007, LB368, § 59.
Operative date January 1, 2008.

21-2960 Suspension of director by board. (1) The board of directors may suspend a director, if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director; or

(c) Intentional infliction of harm on the limited cooperative association.

(2) After suspension, a director may be removed pursuant to section 21-2959.

Source: Laws 2007, LB368, § 60.
Operative date January 1, 2008.

21-2961 Vacancy on board. (1) Unless the articles of organization or bylaws otherwise provide, a vacancy on the board of directors shall be filled:

(a) By majority vote of the remaining directors until the next annual members' meeting or special members' meeting held for that purpose; and

(b) For the unexpired term by members at the next annual members' meeting or special members' meeting called for that purpose.

(2) If the vacating director was elected by a group or class of members or by group, class, or district:

(a) The appointed director shall be of that group, class, or district; and

(b) The election of the director for the unexpired term shall be conducted in the same manner as would the election for that position without a vacancy.

Source: Laws 2007, LB368, § 61.
Operative date January 1, 2008.

21-2962 Compensation of directors. Unless the articles of organization or bylaws otherwise provide, the board of directors may fix the remuneration of directors and nondirector committee members.

Source: Laws 2007, LB368, § 62.
Operative date January 1, 2008.

21-2963 Meetings. (1) The board of directors shall meet at least annually and may hold meetings in or outside this state.

(2) Unless otherwise provided in the articles of organization or bylaws, the board of directors may permit directors to attend board meetings or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

Source: Laws 2007, LB368, § 63.
Operative date January 1, 2008.

21-2964 Action without meeting. (1) Unless prohibited by the articles of organization or bylaws, any action that may be taken by the board of directors may be taken without a meeting if each director consents to action in a record.

(2) Consent under subsection (1) of this section may be withdrawn by a director in a record at any time before the limited cooperative association receives a record of consent from each director.

(3) The record of consent for any action may specify the effective date or time of the action.

Source: Laws 2007, LB368, § 64.
Operative date January 1, 2008.

21-2965 Meetings and notice. (1) Unless otherwise provided by the articles of organization or bylaws, the board of directors may establish a time and place for regular board meetings and notice of the time, place, or purpose of those meetings is not required.

(2) Unless otherwise provided by the articles of organization or bylaws, special meetings of the board of directors shall be preceded by at least three days' notice of the time, date, and place of the meeting. The notice shall contain a statement of the purpose of the special meeting and the meeting shall be limited to the matters contained in the statement.

Source: Laws 2007, LB368, § 65.
Operative date January 1, 2008.

21-2966 Waiver of notice of meeting. (1) Unless otherwise provided in the articles of organization or bylaws, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(2) Unless otherwise provided in the articles of organization or bylaws, a director's participation in a meeting is waiver of notice of that meeting, unless the director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: Laws 2007, LB368, § 66.
Operative date January 1, 2008.

21-2967 Quorum. (1) Unless otherwise provided in the articles of organization or bylaws, a majority of the fixed number of directors on the board of directors constitutes a quorum for the management of the affairs of the limited cooperative association.

(2) If a quorum is in attendance at the beginning of the meeting, any action taken by the board of directors present is valid even if the withdrawal of directors originally present results in the number of directors being less than the number required for a quorum.

Source: Laws 2007, LB368, § 67.
Operative date January 1, 2008.

21-2968 Voting. Each director has one vote for purposes of decisions made by the board of directors.

Source: Laws 2007, LB368, § 68.
Operative date January 1, 2008.

21-2969 Committees. (1) Unless otherwise provided by the articles of organization or bylaws, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(2) Unless otherwise provided by the articles of organization or bylaws, an individual appointed to serve on a committee need not be a director or member of the limited cooperative

association. An individual serving on a committee has the same rights, duties, and obligations as a director serving on a committee.

(3) Unless otherwise provided by the articles of organization or bylaws, each committee may exercise the powers as delegated by the board of directors except that no committee may:

(a) Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(b) Approve or propose to members action requiring approval of members; or

(c) Fill vacancies on the board of directors or any of its committees.

Source: Laws 2007, LB368, § 69.
Operative date January 1, 2008.

21-2970 Standards of conduct and liability. (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director or any failure to take any action if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 2007, LB368, § 70.
Operative date January 1, 2008.

21-2971 Conflict of interest. Except as otherwise provided in section 21-2970, the Business Corporation Act governs conflicts of interests between a director or member of a committee of the board of directors and the limited cooperative association.

Source: Laws 2007, LB368, § 71.
Operative date January 1, 2008.

Cross Reference

Business Corporation Act, see section 21-2001.

21-2972 Right of director to information. A director may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited cooperative association and other information regarding the activities of the limited cooperative association reasonably related to the performance of the director's duties as director but not for any other purpose or in any manner that would violate any duty to the limited cooperative association.

Source: Laws 2007, LB368, § 72.
Operative date January 1, 2008.

21-2973 Other considerations of directors. Unless otherwise provided in the articles of organization or bylaws, a director, in determining the best interests of the limited cooperative association, may consider the interests of employees, customers, and suppliers of the limited cooperative association and of the communities in which the limited cooperative association operates and the long-term and short-term interests of the limited cooperative association and its members.

Source: Laws 2007, LB368, § 73.
Operative date January 1, 2008.

21-2974 Appointment and authority of officers. (1) A limited cooperative association has the offices provided in its articles of organization or bylaws or established by the board of directors consistent with the articles of organization or bylaws.

(2) The articles of organization or bylaws or the board of directors shall designate one of the officers for preparing all records required by section 21-2910 for the authentication of records.

(3) Officers have the authority and shall perform the duties as the articles of organization or bylaws prescribe or as the board of directors determines is consistent with the articles of organization or bylaws.

(4) The election or appointment of an officer does not of itself create a contract with the officer.

(5) Unless otherwise provided in the articles of organization or bylaws an individual may simultaneously hold more than one office in the limited cooperative association.

Source: Laws 2007, LB368, § 74.
Operative date January 1, 2008.

21-2975 Resignation and removal of officers. (1) The board of directors may remove an officer at any time with or without cause.

(2) An officer may resign at any time in a record giving notice to the limited cooperative association. The resignation is effective when the notice is given unless the notice specifies a later time.

Source: Laws 2007, LB368, § 75.
Operative date January 1, 2008.

Part 8 - INDEMNIFICATION

21-2976 Indemnification. Indemnification of any individual who has incurred liability, is a party, or is threatened to be made a party because of the performance of duties to, or activity on behalf of, the limited cooperative association is governed by the Business Corporation Act.

Source: Laws 2007, LB368, § 76.
Operative date January 1, 2008.

Cross Reference

Business Corporation Act, see section 21-2001.

Part 9 - CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

21-2977 Members' contributions. The articles of organization or bylaws may establish the amount, manner, or method of determining any member contribution requirements for members or may authorize the board of directors to establish the manner and terms of any contributions for members.

Source: Laws 2007, LB368, § 77.
Operative date January 1, 2008.

21-2978 Forms of contribution and valuation. (1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully paid.

Source: Laws 2007, LB368, § 78.
Operative date January 1, 2008.

21-2979 Contribution agreements. (1) A contribution agreement entered into before formation of the limited cooperative association is irrevocable for six months unless:

(a) Otherwise provided by the agreement; or

(b) All parties to the agreement consent to the revocation.

(2) Upon default by a party to a contribution agreement entered into before formation, the limited cooperative association, once formed, may:

(a) Collect the amount owed as any other debt; or

(b) Unless otherwise provided in the agreement, rescind the agreement if the debt remains unpaid more than twenty days after the limited cooperative association demands payment from the party in a record.

Source: Laws 2007, LB368, § 79.
Operative date January 1, 2008.

21-2980 Allocation of profits and losses. (1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

(2) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Source: Laws 2007, LB368, § 80.
Operative date January 1, 2008.

21-2981 Distributions. (1) Unless otherwise provided by the articles of organization or bylaws and subject to subsection (2) of this section, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(2) Unless otherwise provided by the articles of organization or bylaws, distributions to members may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, the limited cooperative association's own securities or other securities, or in any other manner.

Source: Laws 2007, LB368, § 81.
Operative date January 1, 2008.

Part 10 - DISSOCIATION

21-2982 Member's dissociation; power of estate of member. (1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger, if, under the plan of merger as approved under section 21-29,122, the person ceases to be a member.

Source: Laws 2007, LB368, § 82.
Operative date January 1, 2008.

21-2983 Effect of dissociation as member. (1) Upon a person's dissociation as a member:

(a) A person dissociated pursuant to section 21-2982 does not have further rights as a member; and

(b) Subject to sections 21-2947 and 21-2948, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee who is not admitted as a member after dissociation.

(2) A person's dissociation as a member does not of itself discharge the person from any obligation to the limited cooperative association which the person incurred while a member.

Source: Laws 2007, LB368, § 83.
Operative date January 1, 2008.

Part 11 - DISSOLUTION

21-2984 Dissolution. Except as otherwise provided in sections 21-2986 and 21-2987, a limited cooperative association is dissolved and its activities shall be wound up only upon the occurrence of any of the following:

(1) The happening of an event or the coming of a time specified in the articles of organization;

(2) The action of the organizers, board of directors, or members under sections 21-2986 and 21-2987;

(3) The passage of ninety days after the dissociation of a member, resulting in the limited cooperative association having less than two members, unless before the end of the period the limited cooperative association admits at least one member in accordance with its articles of organization or bylaws; or

(4) The filing of a declaration by the Secretary of State under section 21-2994.

Source: Laws 2007, LB368, § 84.
Operative date January 1, 2008.

21-2985 Judicial dissolution. A district court may dissolve a limited cooperative association or order any action that under the circumstances is appropriate and equitable:

(1) In a proceeding by the Attorney General, if it is established that:

(a) The limited cooperative association obtained its articles of organization through fraud; or

(b) The limited cooperative association has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member, if it is established that:

(a) The directors are deadlocked in the management of the limited cooperative association's affairs, the members are unable to break the deadlock, and irreparable injury to the limited cooperative association is occurring or is threatened because of the deadlock;

(b) The directors or those in control of the limited cooperative association have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual members' meetings, to elect successors to directors whose terms have expired; or

(d) The assets of the limited cooperative association are being misapplied or wasted; or

(3) In a proceeding by the limited cooperative association to have its voluntary dissolution continued under judicial supervision.

Source: Laws 2007, LB368, § 85.
Operative date January 1, 2008.

21-2986 Voluntary dissolution before commencement of activity. A majority of the organizers or initial directors of a limited cooperative association that has not yet begun activity or the conduct of its affairs may dissolve the limited cooperative association.

Source: Laws 2007, LB368, § 86.
Operative date January 1, 2008.

21-2987 Voluntary dissolution by the board and members. In order to voluntarily dissolve:

(1) A resolution to dissolve shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws;

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The resolution required by subdivision (1) of this section;

(b) A recommendation that the members vote in favor of the resolution, unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision; and

(d) A notice of the meeting in the same manner as a special members' meeting;

(3) Subject to section 21-2939, the resolution to dissolve shall be approved by at least a two-thirds vote of patron members voting at the meeting and at least two-thirds vote of investor members voting at the meeting; and

(4) Unless otherwise provided in the resolution, the limited cooperative association is dissolved upon approval under subdivision (3) of this section.

Source: Laws 2007, LB368, § 87.
Operative date January 1, 2008.

21-2988 Articles of dissolution. (1) A limited cooperative association that has dissolved or is about to dissolve shall deliver to the Secretary of State for filing articles of dissolution that state:

(a) The name of the limited cooperative association;

(b) The date that the limited cooperative association dissolved or when it will dissolve; and

(c) Any other information it deems relevant.

(2) A person has notice of a limited cooperative association's dissolution the later of ninety days after the filing of the statement or the effective date under subdivision (1)(b) of this section.

Source: Laws 2007, LB368, § 88.
Operative date January 1, 2008.

21-2989 Winding up of activities. (1) A limited cooperative association continues after dissolution only for purposes of winding up its activities.

(2) In winding up its activities, the limited cooperative association shall:

(a) Discharge its liabilities, settle and close its activities, and marshal and distribute its assets; and

(b) File articles of dissolution indicating it is winding up, preserve the limited cooperative association or its property as a going concern for a reasonable time, prosecute and defend actions and proceedings, transfer limited cooperative association property, settle disputes by mediation or arbitration, and perform other necessary acts.

(3) On the application of the limited cooperative association, any member, or a holder of financial rights the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited cooperative association's activities, if:

(a) After a reasonable time, the limited cooperative association has not executed winding up under subsection (2) of this section; or

(b) The applicant establishes other good cause.

Source: Laws 2007, LB368, § 89.
Operative date January 1, 2008.

21-2990 Distribution of assets in winding up limited cooperative association. (1) In winding up a limited cooperative association's business, unless otherwise stated in the articles of organization or bylaws, the assets of the limited cooperative association shall be applied to discharge its obligations to creditors, including members who are creditors. Any remaining assets shall be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (2) of this section.

(2) Each member is entitled to a distribution from the limited cooperative association of any remaining assets in the proportion of the member's financial interests to the total financial interests of members of the limited cooperative association after all other obligations are satisfied.

Source: Laws 2007, LB368, § 90.
Operative date January 1, 2008.

21-2991 Known claims against dissolved limited cooperative association. (1) A dissolved limited cooperative association may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice shall:

(a) Specify the information required to be included in a claim;

(b) Provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited cooperative association is barred if the requirements of subsection (2) of this section are met and:

(a) The limited cooperative association has not been notified in a record of the claim; or

(b) In the case of a claim that is timely received but rejected by the dissolved limited cooperative association, the claimant does not commence an action to enforce the claim against the limited cooperative association within ninety days after the receipt of the notice of the rejection, if the notice of rejection states that the claim will be barred unless brought against the limited cooperative association within ninety days after receipt of the notice of rejection.

(4) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that is contingent on that date.

Source: Laws 2007, LB368, § 91.
Operative date January 1, 2008.

21-2992 Other claims against dissolved limited cooperative association. (1) A dissolved limited cooperative association shall publish notice of its dissolution and request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Source: Laws 2007, LB368, § 92.
Operative date January 1, 2008.

21-2993 Court proceeding. (1) A dissolved limited cooperative association that has published a notice under section 21-2991 or 21-2992 may file an application with the district court where the dissolved limited cooperative association's principal office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited cooperative association or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited cooperative association, are reasonably estimated to arise after the effective date of dissolution.

(2) Notice of the proceeding shall be given by the dissolved limited cooperative association to each known claimant holding a contingent claim within ten days after the filing of the application of the limited cooperative association.

(3) The court may appoint a receiver to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such receiver, including all reasonable expert witness fees, shall be paid by the dissolved limited cooperative association.

(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court under section 21-2992 shall satisfy the dissolved limited cooperative association's obligations with respect to claims that are contingent, have not been made known to the dissolved limited cooperative association, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member who received a distribution.

Source: Laws 2007, LB368, § 93.
Operative date January 1, 2008.

21-2994 Administrative dissolution. (1) The Secretary of State may dissolve a limited cooperative association administratively if the limited cooperative association does not, within sixty days after the due date:

(a) Pay any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver its biennial report to the Secretary of State;

(c) Have a registered agent or registered office in this state; or

(d) Notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) If the Secretary of State determines that a ground exists for administratively dissolving a limited cooperative association, the Secretary of State shall file a record of the determination and serve the limited cooperative association with a copy of the filed record.

(3) If, within sixty days after service of the copy, the limited cooperative association does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each uncorrected ground determined by the Secretary of State does not exist, the Secretary of State shall administratively dissolve the limited cooperative association by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the limited cooperative association with a copy of the filed declaration.

(4) A limited cooperative association administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 21-2989 and 21-2990 and to notify claimants under sections 21-2991 and 21-2992.

(5) The administrative dissolution of a limited cooperative association does not terminate the authority of its agent for service of process.

Source: Laws 2007, LB368, § 94.
Operative date January 1, 2008.

21-2995 Reinstatement following administrative dissolution. (1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Source: Laws 2007, LB368, § 95.
Operative date January 1, 2008.

21-2996 Denial of reinstatement; appeal. (1) If the Secretary of State denies a limited cooperative association's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason or reasons for denial and serve the limited cooperative association with a copy of the notice.

(2) Within thirty days after service of the notice of denial, the limited cooperative association may appeal the denial of reinstatement by petitioning the district court to set aside the dissolution. The petition shall be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the limited cooperative association's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved limited cooperative association or may take other action the court considers appropriate.

Source: Laws 2007, LB368, § 96.
Operative date January 1, 2008.

Part 12 - ACTIONS BY MEMBERS

21-2997 Direct action by member. (1) Subject to subsection (2) of this section, a member may maintain a direct action against the limited cooperative association, an officer, or a director to enforce the rights and otherwise protect the interests of the member, including rights and interests under the articles of organization or bylaws.

(2) A member maintaining a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited cooperative association.

Source: Laws 2007, LB368, § 97.
Operative date January 1, 2008.

21-2998 Derivative action. A member may maintain a derivative action to enforce a right of a limited cooperative association if the member adequately represents the interests of the limited cooperative association and if:

(1) The member first makes a demand on the limited cooperative association, requesting that it bring an action to enforce the right, and the limited cooperative association does not bring the action within a reasonable time; and

(2) Ninety days have expired after the date the demand was made unless the member has earlier been notified that the demand has been rejected by the limited cooperative association or unless irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB368, § 98.
Operative date January 1, 2008.

21-2999 Proper plaintiff. A derivative action may be maintained only by a person that is a member at the time the action is commenced and:

(1) That was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved upon the person by operation of law from a person that was a member at the time of the conduct.

Source: Laws 2007, LB368, § 99.
Operative date January 1, 2008.

21-29,100 Complaint. In a derivative action, the complaint shall state with particularity:

(1) The date and content of the plaintiff's demand and the limited cooperative association's response to the demand; and

(2) If ninety days have not expired under subdivision (2) of section 21-2998, that irreparable injury to the limited cooperative association would result by waiting for the expiration of the time.

Source: Laws 2007, LB368, § 100.
Operative date January 1, 2008.

21-29,101 Proceeds and expenses. (1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited cooperative association and not to the derivative plaintiff; and

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited cooperative association.

(2) If a derivative action is successful, in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited cooperative association.

Source: Laws 2007, LB368, § 101.
Operative date January 1, 2008.

Part 13 - FOREIGN COOPERATIVES

21-29,102 Governing law. (1) The laws of the state or other jurisdiction under which a foreign limited cooperative association is organized govern relations among the members of the foreign limited cooperative association and between the members and the foreign limited cooperative association.

(2) A foreign limited cooperative association shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited cooperative association is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited cooperative association to engage in any activity or exercise any power that a limited cooperative association cannot engage in or exercise in this state.

Source: Laws 2007, LB368, § 102.
Operative date January 1, 2008.

21-29,103 Application for certificate of authority. (1) A foreign limited cooperative association may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall state:

(a) The name of the foreign limited cooperative association and, if the name does not comply with section 21-2908, an alternative name adopted pursuant to section 21-29,106;

(b) The name of the state or other jurisdiction under whose law the foreign limited cooperative association is organized;

(c) The street and mailing addresses of the foreign limited cooperative association's designated office and, if the laws of the jurisdiction under which the foreign limited cooperative association is organized require the foreign limited cooperative association to maintain an office in that jurisdiction, the street and mailing addresses of the required office;

(d) The name and street and mailing addresses of the foreign limited cooperative association's agent for service of process in this state; and

(e) The name and street and mailing addresses of each of the foreign limited cooperative association's current directors and officers.

(2) A foreign limited cooperative association shall deliver with the completed application a certificate of good standing or existence or a similar record signed by the Secretary of State or other official having custody of the foreign limited cooperative association's publicly filed records in the state or other jurisdiction under whose law the foreign limited cooperative association is organized.

Source: Laws 2007, LB368, § 103.
Operative date January 1, 2008.

21-29,104 Activities not constituting transacting business. (1) Activities of a foreign limited cooperative association which do not constitute transacting business in this state within the meaning of this section include:

(a) Maintaining, defending, and settling an action or proceeding;

(b) Holding meetings of its members or carrying on any other activity concerning its internal affairs;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited cooperative association's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and

(j) Transacting business in interstate commerce.

(2) For purposes of this section, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited cooperative association to service of process, taxation, or regulation under any other law of this state.

Source: Laws 2007, LB368, § 104.
Operative date January 1, 2008.

21-29,105 Filing of certificate of authority. Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Limited Cooperative Association Act, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited cooperative association or its representative.

Source: Laws 2007, LB368, § 105.
Operative date January 1, 2008.

21-29,106 Noncomplying name of foreign cooperative. (1) A foreign limited cooperative association whose name does not comply with section 21-2908 shall not obtain a certificate of authority until it adopts, for purposes of transacting business in this state, an alternative name that complies with such section. A foreign limited cooperative association that adopts an alternative name under this subsection and then obtains a certificate of authority with the name need not comply with sections 21-2907 and 21-2908. After obtaining a

certificate of authority with an alternative name, a foreign limited cooperative association shall transact business in this state under the name unless the foreign limited cooperative association is authorized under sections 21-2907 and 21-2908 to transact business in this state under another name.

(2) If a foreign limited cooperative association authorized to transact business in this state changes its name to one that does not comply with sections 21-2907 and 21-2908, it shall not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

Source: Laws 2007, LB368, § 106.
Operative date January 1, 2008.

21-29,107 Revocation of certificate of authority. (1) A certificate of authority of a foreign limited cooperative association to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (2) and (3) of this section if the foreign limited cooperative association does not:

(a) Pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Limited Cooperative Association Act or other law;

(b) Deliver, within sixty days after the due date, its biennial report required under section 21-2994;

(c) Appoint and maintain an agent for service of process as required by section 21-29,103; or

(d) Deliver for filing a statement of a change under section 21-2914 within thirty days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority, the Secretary of State shall prepare, sign, and file a certificate of revocation and send a copy to the foreign limited cooperative association's registered agent for service of process in this state, or if the foreign limited cooperative association does not appoint and maintain an agent for service of process in this state, to the foreign limited cooperative association's designated office. The notice shall state:

(a) The revocation's effective date, which shall be at least sixty days after the date the Secretary of State sends the copy; and

(b) The foreign limited cooperative association's noncompliance with subsection (1) of this section which is the reason for the revocation.

(3) The authority of the foreign limited cooperative association to transact business in this state ceases on the effective date of the certificate of revocation unless before that date the foreign limited cooperative association cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited cooperative association cures the failures, the Secretary of State shall so indicate on the filed notice.

Source: Laws 2007, LB368, § 107.
Operative date January 1, 2008.

21-29,108 Cancellation of certificate of authority; effect of failure to have certificate. (1) To cancel its certificate of authority to transact business in this state, a foreign limited cooperative association shall deliver to the Secretary of State for filing a notice of

cancellation. The certificate is canceled when the notice becomes effective under section 21-2919.

(2) A foreign limited cooperative association transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited cooperative association to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited cooperative association or prevent the foreign limited cooperative association from defending an action or proceeding in this state.

(4) A member of a foreign limited cooperative association is not liable for the obligations of the foreign limited cooperative association solely by reason of the foreign limited cooperative association's having transacted business in this state without a certificate of authority.

(5) If a foreign limited cooperative association transacts business in this state without a certificate of authority or cancels its certificate of authority, it may be served in accordance with section 21-2916 for rights of action arising out of the transaction of business in this state.

Source: Laws 2007, LB368, § 108.
Operative date January 1, 2008.

21-29,109 Action by Attorney General. The Attorney General may maintain an action to restrain a foreign limited cooperative association from transacting business in this state in violation of the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 109.
Operative date January 1, 2008.

Part 14 - AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS

21-29,110 Authority to amend articles of organization or bylaws. (1) A limited cooperative association may amend its articles of organization or bylaws.

(2) A member of a limited cooperative association does not have vested rights in any provision in the articles of organization or bylaws.

Source: Laws 2007, LB368, § 110.
Operative date January 1, 2008.

21-29,111 Notice and action on amendment of articles of organization or bylaws. To amend its articles of organization or bylaws:

(1) A proposed amendment shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The proposed amendment;

(b) A recommendation that the members approve the amendment unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the amendment to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 111.
Operative date January 1, 2008.

21-29,112 Change to amendment of articles of organization or bylaws at meeting. (1) No substantive change to the proposed amendment of the articles of organization or bylaws shall be made at the members' meeting at which the vote occurs.

(2) Subject to subsection (1) of this section, any amendment of the amendment need not be separately voted upon by the board of directors.

(3) The vote to adopt an amendment to the amendment is the same as that required to pass the proposed amendment.

Source: Laws 2007, LB368, § 112.
Operative date January 1, 2008.

21-29,113 Approval of amendment. (1) An amendment to the articles of organization shall be approved by at least a two-thirds vote of members voting at the meeting.

(2) An amendment to the bylaws shall be approved by at least a majority vote of members voting at the meeting and by at least a majority of investor members voting at the meeting.

Source: Laws 2007, LB368, § 113.
Operative date January 1, 2008.

21-29,114 Vote affecting group, class, or district of members. Members shall vote as a separate group, if a proposed amendment affects the group, class, or district of members in:

(1) The equity capital structure of the limited cooperative association, including the rights of the limited cooperative association's members to share in profits or distributions, and the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(2) The transferability of members' interests;

(3) The manner or method of allocation of profits or losses among members;

(4) The quorum for a meeting and rights of voting and governance not including the modification of district boundaries which may, unless otherwise provided in the articles of organization or operating agreement, be determined by the board of directors; or

(5) The terms for admission of new members.

Source: Laws 2007, LB368, § 114.
Operative date January 1, 2008.

21-29,115 Emergency bylaws; procedure for adoption. (1) Unless the articles of organization provide otherwise, the board of directors may adopt bylaws to be effective only in an emergency described in subsection (4) of this section. The emergency bylaws may be amended or repealed by the members and may make all provisions necessary for managing the limited cooperative association during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) The regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Action taken by the limited cooperative association in good faith in accordance with the emergency bylaws:

(a) Binds the limited cooperative association; and

(b) May not be used to impose liability on a director, officer, employee, or agent of the limited cooperative association.

(4) An emergency exists for purposes of this section if a quorum of the board of directors cannot readily be assembled because of a catastrophic event.

Source: Laws 2007, LB368, § 115.
Operative date January 1, 2008.

21-29,116 Amendment or restatement of articles of organization. (1) To amend or restate its articles of organization, a limited cooperative association shall deliver to the Secretary of State for filing an amendment or restatement of the articles of organization stating:

(a) The name of the limited cooperative association;

(b) The date of filing of its initial articles of organization; and

(c) The changes the amendment makes to the articles of organization as most recently amended or restated.

(2) A limited cooperative association shall promptly deliver to the Secretary of State for filing an amendment to the articles of organization to reflect the appointment of a person to wind up the limited cooperative association's activities under sections 21-2989 and 21-2990.

(3) An organizer that knows that any information in filed articles of organization was false when the articles were filed or has become false due to changed circumstances shall promptly:

(a) Cause the articles to be amended; and

(b) Deliver to the Secretary of State an amendment for filing.

(4) Articles of organization may be amended at any time for any other proper purpose as determined by the limited cooperative association.

(5) Restated articles of organization shall be delivered to the Secretary of State for filing in the same manner as an amendment.

(6) Subject to section 21-2919, an amendment or restated article is effective when filed by the Secretary of State.

Source: Laws 2007, LB368, § 116.
Operative date January 1, 2008.

Part 15 - CONVERSION, MERGER, AND CONSOLIDATION

21-29,117 Conversion, merger, and consolidation; terms, defined. For purposes of sections 21-29,117 to 21-29,128:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger;

(2) Constituent organization means an organization that is a party to a merger;

(3) Converted organization means the organization into which a converting organization converts pursuant to sections 21-29,118 to 21-29,121;

(4) Converting limited cooperative association means a converting organization that is a limited cooperative association;

(5) Converting organization means an organization that converts to another organization pursuant to section 21-29,118;

(6) Governing statute of an organization means the statute that governs the organization's internal affairs;

(7) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

(8) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

(9) Surviving organization means an organization into which one or more other organizations are merged. A surviving organization may exist before the merger or be created by the merger.

Source: Laws 2007, LB368, § 117.
Operative date January 1, 2008.

21-29,118 Conversion. (1) An organization other than a limited cooperative association may convert to a limited cooperative association and a limited cooperative

association may convert to another organization pursuant to this section and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

(b) The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) The other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion shall be in a record and shall include:

(a) The name and form of the organization before conversion;

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) The organizational documents of the converted organization.

Source: Laws 2007, LB368, § 118.
Operative date January 1, 2008.

21-29,119 Action on plan of conversion by converting limited cooperative association. (1) A plan of conversion shall be consented to by at least two-thirds vote of patron members voting under section 21-2939 and by at least two-thirds vote of investor members, if any, voting under section 21-2942. If, as a result of the conversion, any member of the limited cooperative association has personal liability, consent of that member in a record shall be required.

(2) Subject to any contractual rights, after a conversion is approved, and at any time before a filing is made under section 21-29,120, a converting limited cooperative association may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same consent as required to approve the plan.

Source: Laws 2007, LB368, § 119.
Operative date January 1, 2008.

21-29,120 Filings required for conversion; effective date. (1) After a plan of conversion is approved:

(a) A converting limited cooperative association shall deliver to the Secretary of State for filing articles of conversion, which shall include:

(i) A statement that the limited cooperative association has been converted into another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by the Nebraska Limited Cooperative Association Act;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which may be used for the purposes of section 21-2916; and

(b) If the converting organization is not a converting limited cooperative association, the converting organization shall deliver to the Secretary of State for filing articles of organization, which shall include, in addition to the information required by section 21-2916:

(i) A statement that the limited cooperative association was converted from another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) A conversion becomes effective:

(a) If the converted organization is a limited cooperative association, when the certificate of limited partnership takes effect; and

(b) If the converted organization is not a limited cooperative association, as provided by the governing statute of the converted organization.

Source: Laws 2007, LB368, § 120.
Operative date January 1, 2008.

21-29,121 Effect of conversion. (1) An organization that has been converted pursuant to sections 21-29,117 to 21-29,121 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting organization remains vested in the converted organization;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited cooperative association for the purposes of section 21-2987.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited cooperative association if, before the conversion, the converting limited cooperative association was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the Secretary of

State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in sections 21-2913 and 21-2916.

Source: Laws 2007, LB368, § 121.
Operative date January 1, 2008.

21-29,122 Merger. (1) A limited cooperative association may merge with one or more other constituent organizations pursuant to this section and a plan of merger, if:

(a) The governing statute of each of the other organizations authorizes the merger;

(b) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Source: Laws 2007, LB368, § 122.
Operative date January 1, 2008.

21-29,123 Notice and action on plan of merger by constituent limited cooperative association. (1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger;

(b) A recommendation that the members approve the plan of merger unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that decision;

(d) Any condition of its submission of the plan of merger to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 123.
Operative date January 1, 2008.

21-29,124 Approval or abandonment of merger by members of constituent limited cooperative association. (1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Source: Laws 2007, LB368, § 124.
Operative date January 1, 2008.

21-29,125 Merger with subsidiary. (1) Unless the articles of organization or bylaws of the limited cooperative association or the organic law or articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger.

Source: Laws 2007, LB368, § 125.
Operative date January 1, 2008.

21-29,126 Filings required for merger; effective date. (1) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(c) The date the merger is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger for filing in the office of the Secretary of State.

(4) A merger becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of merger; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Source: Laws 2007, LB368, § 126.
Operative date January 1, 2008.

21-29,127 Effect of merger. When a merger becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan take effect;

(8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger does not dissolve the limited cooperative association for purposes of section 21-2987;

(9) If the surviving organization is created by the merger:

(a) If it is a limited cooperative association, the articles of organization become effective; or

(b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization exists before the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

Source: Laws 2007, LB368, § 127.
Operative date January 1, 2008.

21-29,128 Consolidation. (1) The limited cooperative associations may agree to substitute the word consolidation for the term merger pursuant to this section if:

(a) Each constituent organization is a limited cooperative association or its governing statute expressly provides for a consolidation; and

(b) The surviving organization is a limited cooperative association or its governing statute expressly provides for a consolidation.

(2) All provisions governing mergers or using the term merger in the Nebraska Limited Cooperative Association Act shall apply equally to mergers that the constituent organizations choose to name consolidations under subsection (1) of this section.

Source: Laws 2007, LB368, § 128.
Operative date January 1, 2008.

Part 16 - DISPOSITION OF ASSETS

21-29,129 Disposition of assets. Member approval by at least two-thirds of the patron members voting under section 21-2939 and by at least a two-thirds vote of the investor members, if voting, under section 21-2942, is required for a limited cooperative association to sell, lease, exchange, or otherwise dispose of all or substantially all of the assets of the limited cooperative association.

Source: Laws 2007, LB368, § 129.
Operative date January 1, 2008.

21-29,130 Notice and action on disposition of assets. To dispose of assets subject to section 21-29,129:

(1) The proposed disposition shall be approved by a majority vote of the board of directors unless a greater vote is required by the articles of organization or bylaws; and

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member notice of a special meeting of the members as required by section 21-2935 that sets forth:

(a) The terms of the proposed disposition;

(b) A recommendation that the members approve the disposition unless the board determines because of conflict of interest or other special circumstances it should not make such a recommendation;

(c) If the board makes no recommendation, the basis of that decision;

(d) Any condition of its submission of the proposed disposition to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting under sections 21-2935 and 21-2936.

Source: Laws 2007, LB368, § 130.
Operative date January 1, 2008.

21-29,131 Vote on disposition of assets. Disposition of assets subject to section 21-29,129 shall be consented to by:

(1) At least two-thirds vote of patron members voting under section 21-2939; and

(2) At least a two-thirds vote of investor members, if any, under section 21-2942.

Source: Laws 2007, LB368, § 131.
Operative date January 1, 2008.

Part 17 - MISCELLANEOUS PROVISIONS

21-29,132 Exemption from Securities Act of Nebraska. Member interests offered or sold by a limited cooperative association are exempt from the Securities Act of Nebraska to the extent interests offered or sold by other types of organizations are exempt under subdivision (15) of section 8-1111.

Source: Laws 2007, LB368, § 132.
Operative date January 1, 2008.

21-29,133 Immunities, rights, and privileges. Limited cooperative associations have the same immunities, rights, and privileges provided other types of associations formed under other laws of this state and shall be exempt from those laws to the same extent, but only to the same extent, as those entities organized under the Nonstock Cooperative Marketing Act or sections 21-1301 to 21-1339 are exempt.

Source: Laws 2007, LB368, § 133.
Operative date January 1, 2008.

Cross Reference

Nonstock Cooperative Marketing Act, see section 21-1401.

21-29,134 Secretary of State; powers. The Secretary of State shall have all powers reasonably necessary to perform the duties required of him or her under the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 134.
Operative date January 1, 2008.

CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.

ARTICLE 12

COUNTY ATTORNEY

Section.

23-1204.06 Deputies; grant program for termination of parental rights actions. A grant program is established to reimburse counties for the personal service costs of deputy county attorneys associated with termination of parental rights actions resulting from Laws 1998, LB 1041. Counties in which a city of the metropolitan class or a city of the primary class is located are eligible for grants under this program. The Department of Health and Human Services shall administer the program. Counties receiving grants shall submit quarterly expenditure reports to the department.

Source: Laws 1998, LB 1041, § 47; Laws 2007, LB296, § 24.
Operative date July 1, 2007.

23-1205 Acting county attorney; appointment; when authorized; compensation. In the absence, sickness, or disability of the county attorney and his or her deputies, or upon request of the county attorney for good cause, the court may appoint an attorney to act as county attorney in any investigation, appearance, or trial, by an order to be entered upon the minutes of the court. Such attorney shall be allowed compensation for such services as the court shall determine, 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.
Effective date September 1, 2007.

ARTICLE 16

COUNTY TREASURER

Section.

23-1601 County treasurer; general duties. (1) It is the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived and by any method of payment provided by section 77-1702, and all other money which is by law directed to be paid to him or her. All money received by the county treasurer for the use of the county shall be paid out by him or her only on warrants issued by the county board according to law, except when special provision for payment of county money is otherwise made by law.

(2) The county treasurer shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(3) The county treasurer, at the direction of the city or village, shall invest the bond fund money collected for each city or village located within each county. The bond fund money shall be invested by the county treasurer and any investment income shall accrue to the bond fund. The county treasurer shall notify the city or village when the bonds have been retired.

(4)(a) On or before the fifteenth day of each month, the county treasurer (i) shall pay to each city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district located within the county the amount of all funds collected or received for the city, village, school district, educational service unit, county agricultural society, and rural or suburban fire protection district the previous calendar month, including bond fund money when requested by any city of the first class under section 16-731, and (ii) on forms provided by the Auditor of Public Accounts, shall include with the payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes, except that the Auditor of Public Accounts shall, upon request of a county, approve the use and reproduction of a county's general ledger or other existing forms if such ledger or other forms clearly indicate the sources of all funds received or collected and an accounting of any expenses incurred in the collection of ad valorem taxes.

(b) If all such funds received or collected are less than twenty-five dollars, the county treasurer may hold such funds until such time as they are equal to or exceed twenty-five dollars. In no case shall such funds be held by the county treasurer longer than six months.

(5) Notwithstanding subsection (4) of this section, the county treasurer of any county in which a city of the metropolitan class or a Class V school district is located shall pay to the city of the metropolitan class and to the Class V school district on a weekly basis the amount of all current year funds as they become available for the city or the school district.

Source: Laws 1879, § 91, p. 379; R.S.1913, § 5637; C.S.1922, § 4964; C.S.1929, § 26-1301; Laws 1939, c. 28, § 14, p. 153; C.S.Supp.,1941, § 26-1301; R.S.1943, § 23-1601; Laws 1978, LB 847, § 1; Laws 1983, LB 391, § 1; Laws 1995, LB 122, § 1; Laws 1996, LB 604, § 2; Laws 1997, LB 70, § 1; Laws 1997, LB 85, § 1; Laws 1999, LB 287, § 1; Laws 2007, LB334, § 3.
Operative date July 1, 2007.

23-1611 County officers; uniform system of accounting; duty of Auditor of Public Accounts; individual ledger sheets; approval. The Auditor of Public Accounts shall establish a uniform system of accounting for all county officers. The system, when established, shall be installed and used by all county officers, except that any county with a population of one hundred thousand or more inhabitants may use an accounting system that utilizes generally accepted accounting principles. With the prior approval of the Tax Commissioner, the county board of any county may direct that for all purposes of assessment of property, and for the levy and collection of all taxes and special assessments, there shall be used only individual ledger sheets or other tax records suitable for use in connection with electronic data processing equipment or other mechanical office equipment, to be used in accordance with procedures to be approved by the Tax Commissioner. To the extent practicable, the accounting system established for county officers shall be the same system established for state agencies.

Source: Laws 1893, c. 15, § 4, p. 149; R.S.1913, § 5648; Laws 1919, c. 73, § 3, p. 191; Laws 1919, c. 76, § 3, p. 197; C.S.1922, § 4975; C.S.1929, § 26-1312; Laws 1937, c. 57, § 4, p. 233; C.S.Supp.,1941, § 26-1312; R.S.1943, § 23-1611; Laws 1967, c. 132, § 1, p. 415; Laws 1969, c. 168, § 1, p. 744; Laws 1995, LB 154, § 1; Laws 1995, LB 490, § 24; Laws 2007, LB334, § 4.
Operative date July 1, 2007.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section.

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.

(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.
Operative date September 1, 2007.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment. (1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, 23-2310, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, 23-2310, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2.
Operative date September 1, 2007.

Cross Reference

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

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. 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.
Operative date September 1, 2007.

23-2319.01 Termination of employment; account forfeited; when; County Employer Retirement Expense Fund; created; investment. (1) For a member who has terminated employment and is not vested, the balance of the member's employer account or employer cash balance account shall be forfeited. The forfeited account shall be credited to the County Employees Retirement Fund and shall first be used to meet the expense charges incurred by the retirement board in connection with administering the retirement system, which charges shall be credited to the County Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the County Employees Cash Balance Retirement Expense Fund, if the member participated in the cash balance option, and the remainder, if any, shall then be used to reduce the county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts. No forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the county and a grievance or other appeal of the termination is filed, transactions involving forfeiture of his or her employer account or employer cash balance account shall be suspended pending the final outcome of the grievance or other appeal.

(3) The County Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. The fund shall consist of any reduction in a county contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts referred to in subsection (1) of this section. The fund shall be established and maintained separate from any funds held in trust for the benefit of members under the county employees retirement system. Expenses incurred as a result of a county depositing amounts into the fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with section 23-2319.02. 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 1997, LB 624, § 5; Laws 2000, LB 1200, § 4; Laws 2002, LB 687, § 14; Laws 2003, LB 451, § 10; Laws 2005, LB 364, § 5; Laws 2007, LB328, § 4.
Operative date September 1, 2007.

Cross Reference

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

23-2319.02 County Employer Retirement Expense Fund; State Employer Retirement Expense Fund; use. (1) The County Employer Retirement Expense Fund shall be used to meet expenses of the county employees retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

(2) The State Employer Retirement Expense Fund shall be used to meet expenses of the State Employees Retirement System of the State of Nebraska whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the State Employees Defined Contribution Retirement Expense Fund or State Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

Source: Laws 2005, LB 364, § 22; Laws 2007, LB328, § 5.
Operative date September 1, 2007.

23-2320 Employee; reemployment; status; how treated. (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions under rules and regulations adopted by the board. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6. Operative date September 1, 2007.

ARTICLE 35

MEDICAL AND MULTIUNIT FACILITIES

(c) HOSPITAL AUTHORITIES

Section.
23-3595. Hospital authority; board of trustees; duties.

(c) HOSPITAL AUTHORITIES

23-3595 Hospital authority; board of trustees; duties. All hospitals operated directly by an authority and not operated or leased as lessee by a nonprofit person, firm, partnership, limited liability company, association, or corporation shall be operated by the board of trustees of such authority according to the best interests of the public health, and the board of trustees shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, protection, and maintenance of such hospitals and all property belonging thereto and may prescribe the terms upon which patients may be admitted thereto. Such hospitals shall not be required to contract with counties or with agencies thereof to provide care for indigent county patients at below the cost for care. In fixing the basic room rates for such hospitals, the board of trustees shall establish such basic room rates as will, together with other income and revenue available for such purpose and however derived, permit each such hospital to be operated upon a self-supporting basis. In establishing basic room rates for such hospital, the board of trustees shall give due consideration to at least the following factors: Costs of administration, operation, and maintenance of such hospitals; the cost of making necessary repairs and renewals thereto; debt service requirements; the creation of reserves for contingencies; and projected needs for expansion and for the making of major improvements. Minimum standards of operation for such hospitals, at least equal to those set by the Department of Health and Human Services, shall be established and enforced by the board of trustees.

In the case of hospitals financed with the proceeds of bonds issued by an authority, but not operated directly by an authority, the board of trustees shall require that the financing documents contain covenants of the operators of such hospitals to establish rates at least sufficient to pay costs of administration, operation, and maintenance of such hospitals, the cost of making necessary repairs and renewals thereto, and to provide for debt service requirements, the creation of reserves for contingencies, and projected needs for expansion and the making of major improvements.

Source: Laws 1971, LB 54, § 20; Laws 1972, LB 1382, § 2; Laws 1980, LB 801, § 2; R.S.1943, (1987), § 23-343.93; Laws 1993, LB 121, § 165; Laws 1996, LB 1044, § 58; Laws 2007, LB296, § 25. Operative date July 1, 2007.

CHAPTER 24
COURTS

Article.

ARTICLE 2

SUPREME COURT

(a) ORGANIZATION

Section.

(i) COUNSEL FOR DISCIPLINE CASH FUND

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges. On July 1, 2006, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred twenty-six thousand eight hundred forty-six dollars. On July 1, 2007, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred thirty-one thousand two hundred eighty-five dollars and sixty-one cents. 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.

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.
Effective date July 1, 2007.

(i) COUNSEL FOR DISCIPLINE CASH FUND

24-229 Counsel for Discipline Cash Fund; created; use; investment. The Counsel for Discipline Cash Fund is created. The fund shall be established within the Nebraska Supreme Court and administered by the State Court Administrator. The fund shall consist of a portion of the annual membership dues assessed by the Nebraska State Bar Association and remitted to the Nebraska Supreme Court for credit to the fund. The fund shall only be used to pay the costs associated with the operation of the Office of the Counsel for Discipline. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB322, § 1.
Operative date July 1, 2007.

Cross Reference

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

ARTICLE 3

DISTRICT COURT

(a) ORGANIZATION

Section.
24-301.02. District court judicial districts; described; number of judges.

(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 there shall be seven 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. Effective date July 1, 2007.

Cross Reference

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

ARTICLE 5

COUNTY COURT

(a) ORGANIZATION

Section.

24-516. Judge; interchange; vacancy, disqualification, absence, or temporary incapacity; Chief Justice; temporary appointment; appointment of district judge to act; when; effect.

(a) ORGANIZATION

24-503 County judge districts; created; number of judges; membership. For the purpose of serving the county courts in each county, twelve county judge districts are hereby created:

District No. 1 shall contain the counties of Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, 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 Fillmore, Adams, Clay, Phelps, Kearney, Harlan, Franklin, Webster, and Nuckolls;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

District 4 shall have twelve county judges. Districts 3 and 5 shall have six county judges. Districts 11 and 12 shall have five county judges. Districts 2, 6, and 9 shall have four county judges. Districts 1, 7, 8, and 10 shall have three county judges.

Judge of the county court shall include any person appointed to the office of county judge or municipal judge prior to July 1, 1985, pursuant to Article V, section 21, of the Constitution of Nebraska.

Any person serving as a municipal judge in district 3 or 4 immediately prior to July 1, 1985, shall be a judge of the county court and shall be empowered to hear only those cases as provided in section 24-517 which the presiding judge of the county court for such district, with the concurrence of the Supreme Court, shall direct.

Source: Laws 1972, LB 1032, § 3; Laws 1974, LB 785, § 1; Laws 1980, LB 618, § 2; Laws 1984, LB 13, § 7; Laws 1985, LB 287, § 2; Laws 1986, LB 516, § 3; Laws 1987, LB 509, § 1; Laws 1990, LB 822, § 13; Laws 1991, LB 181, § 2; Laws 1992, LB 1059, § 4; Laws 1993, LB 306, § 2; Laws 1998, LB 404, § 2; Laws 2007, LB377, § 3.
Effective date July 1, 2007.

24-514 Salaries; expenses; operational costs; payment; property purchased by county; how treated. The State of Nebraska shall pay, with funds appropriated to the Supreme Court, all salaries, benefits, and expenses related to the education and travel of judges and employees of the county courts. The state shall also pay, with funds appropriated to the Supreme Court, the following operational costs of the county courts:

(1) Computer hardware and software used for data processing;

(2) Computer hardware and software used for word processing if the costs are incurred on equipment owned by the state;

(3) Communication line costs arising from data and word processing pursuant to subdivisions (1) and (2) of this section; and

(4) Multi-track recorders, microphones, and playback units used to create verbatim records of county court proceedings.

The county shall pay any county court expense not provided for in this section. All property purchased by the county as a county court expense before September 9, 1993, or on or after September 9, 1993, shall remain the property of the county.

Source: Laws 1972, LB 1032, § 14; Laws 1973, LB 226, § 4; Laws 1990, LB 822, § 15; Laws 1993, LB 593, § 1; Laws 2007, LB213, § 1.
Effective date September 1, 2007.

24-516 Judge; interchange; vacancy, disqualification, absence, or temporary incapacity; Chief Justice; temporary appointment; appointment of district judge to act; when; effect. (1) The county judges may interchange and hold each other's court. Whenever requested by a county judge of another county judge district or it appears by affidavit, to the satisfaction of any county judge in the state, that the judge of any other county judge district is unable to act, on account of sickness, interest, or absence from the county judge district or from any other cause, the judge to whom application is made shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter arising within the county judge district where such vacancy or disability exists which the judge of such county court could make or do. The order or act shall have the same effect as if made or done by the judge of such county judge district.

(2) In addition to subsection (1) of this section, in the event of a vacancy in the office of county judge or the disqualification, absence, or the temporary incapacity of a county judge, the Chief Justice of the Supreme Court may designate a county judge from another county judge district to temporarily perform the duties of the office. The Chief Justice also may assign a county judge to temporarily perform duties in another county judge district when in his or her opinion such assignment would be beneficial to the administration of justice.

(3) A county judge may appoint by order a consenting district judge residing in the county judge district to act as county judge in specific instances on any matter over which the county court has determined that it has jurisdiction over the parties and subject matter. The appointed district judge shall have power to make any order or do any act relative to any suit, judicial matter, or proceeding or to any special matter which the county judge of such county judge district could make or do. Any such order or act shall have the same effect as if made or done by the county judge of such county judge district. A district judge shall not hear any appeals of matters in which he or she acted as a county judge. A copy of the order of appointment shall be filed in each action in which a district judge acts as a county judge.

Source: Laws 1972, LB 1032, § 16; Laws 1973, LB 226, § 5; Laws 1977, LB 5, § 1; Laws 1986, LB 516, § 4; Laws 2007, LB214, § 2.
Effective date September 1, 2007.

ARTICLE 7

JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section.
24-707. Death of judge; benefits spouse entitled to receive; contributions paid to beneficiary; when.

(a) JUDGES RETIREMENT

24-707 Death of judge; benefits spouse entitled to receive; contributions paid to beneficiary; when. (1) In the event of the death of a judge prior to retirement, if such judge shall have had five or more years of creditable service, the surviving spouse of such judge shall at his or her option, exercised within twelve months after the date of death, be immediately entitled to receive an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (a) on the date of death if his or her age at death is sixty-five years or more or (b) at age sixty-five years if his or her age at death is less than sixty-five years. If such option is not exercised by such surviving spouse within twelve months after the judge's death, if there is no surviving spouse, or if the judge has not served for five years, then the beneficiary, or the estate if the judge has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such judge plus regular interest.

(2) In the event of the death of a judge subsequent to retirement, if such judge has not filed a statement of intent with the board to elect to receive any other form of annuity which may be provided for by section 24-710 or elected to make contributions and receive benefits as provided in section 24-703.03, the amount of annuities such judge has received under the

provisions of the Judges Retirement Act shall be computed and, if such amount shall be less than the contributions to the fund made by such judge, plus regular interest, the difference shall be paid to the beneficiary or estate.

(3) Benefits to which the surviving spouse, beneficiary, or estate of a judge shall be entitled shall commence immediately upon the death of such judge.

Source: Laws 1955, c. 83, § 7, p. 248; Laws 1973, LB 478, § 1; Laws 1974, LB 905, § 5; Laws 1975, LB 298, § 1; Laws 1977, LB 344, § 4; Laws 1983, LB 223, § 2; Laws 1986, LB 92, 4; Laws 1989, LB 506, § 5; Laws 1994, LB 833, § 20; Laws 1996, LB 1273, § 20; Laws 1997, LB 624, § 12; Laws 2000, LB 1192, § 7; Laws 2003, LB 451, § 15; Laws 2004, LB 1097, § 13; Laws 2007, LB508, § 1. Effective date May 17, 2007.

ARTICLE 8

SELECTION AND RETENTION OF JUDGES

(a) JUDICIAL NOMINATING COMMISSIONS

Section.

(a) JUDICIAL NOMINATING COMMISSIONS

24-809 Judicial nominating commission; chairperson; manner of voting; vacancies; procedure. The judge of the Supreme Court on each judicial nominating commission shall be the chairperson of the commission and shall preside at all of its meetings. He or she shall not be entitled to vote. In selecting or rejecting judicial nominees, the members of the commission shall vote by oral roll call vote. When it is determined that a judicial vacancy exists in a particular district, the chairperson of the commission shall determine whether there will be eight qualified members of the appropriate judicial nominating commission, including alternate members. If it is determined that there will not be eight members present and capable of voting at the time the commission meets to vote, the chairperson of the commission shall inform the Governor of the number of citizen members which need to be appointed and shall inform the Executive Director of the Nebraska State Bar Association of the number of lawyer members which need to be elected. The Governor shall promptly make such number of citizen appointments as are necessary. The Executive Council of the Nebraska State Bar Association shall nominate at least one lawyer candidate for each vacancy on the nominating commission which needs to be filled. If the Executive Council is unable, with reasonable effort, to obtain a sufficient number of candidates for each vacancy, it may nominate candidates who do not reside in the judicial district or area served by such nominating commission. The nominations shall be sent to the Clerk of the Supreme Court, and the lawyer vacancies shall be filled by election as provided in section 24-806. There shall be eight qualified commission members present and capable of voting at the time the vote is taken. In the event that a nominating commission public hearing is postponed due to the lack of a full complement of commission members entitled to vote, the time limits specified in subsection (4) of section 24-810 shall

be extended for an additional thirty days for each such postponement. The chairperson of the commission shall cause appropriate notice of the time and place of the newly scheduled judicial nominating commission public hearing to be published as provided in subsection (1) of section 24-810. The postponement of a commission hearing shall not extend the initial application filing deadline of twenty-one days prior to the initial public hearing. Each candidate shall receive five votes from the voting members of the nominating commission to have his or her name submitted to the Governor.

Source: Laws 1963, c. 124, § 9, p. 475; Laws 1973, LB 110, § 5; Laws 1991, LB 251, § 5; Laws 1995, LB 303, § 6; Laws 2007, LB290, § 1.
Effective date September 1, 2007.

CHAPTER 25
COURTS; CIVIL PROCEDURE

Article.

ARTICLE 2

COMMENCEMENT AND LIMITATION OF ACTIONS

Section.

25-213 Tolling of statutes of limitation; when. Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in Chapter 25, the Political Subdivisions Tort Claims Act, the Nebraska Hospital-Medical Liability Act, the State Contract Claims Act, the State Tort Claims Act, or the State Miscellaneous Claims Act, except for a penalty or forfeiture, for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, is, at the time the cause of action accrued, within the age of twenty years, a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by Chapter 25 after such disability is removed. For the recovery of the title or possession of lands, tenements, or hereditaments or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof but in no case longer than ten years after the termination of such disability. Absence from the

state, death, or other disability shall not operate to extend the period within which actions in rem are to be commenced by and against a nonresident or his or her representative.

Source: R.S.1867, Code § 17, p. 396; R.S.1913, § 7576; C.S.1922, § 8519; Laws 1925, c. 64, § 2, p. 221; C.S.1929, § 20-213; R.S.1943, § 25-213; Laws 1947, c. 243, § 12, p. 766; Laws 1972, LB 1049, § 1; Laws 1974, LB 949, § 2; Laws 1984, LB 692, § 2; Laws 1986, LB 1177, § 5; Laws 1988, LB 864, § 5; Laws 2007, LB339, § 1.
Effective date September 1, 2007.

Cross Reference

Nebraska Hospital-Medical Liability Act, see section 44-2855.
Political Subdivisions Tort Claims Act, see section 13-901.
State Contract Claims Act, see section 81-8,302.
State Miscellaneous Claims Act, see section 81-8,294.
State Tort Claims Act, see section 81-8,235.

ARTICLE 10

PROVISIONAL REMEDIES

(d) RECEIVERS

Section.
25-1081. Appointment of receiver; grounds.

(d) RECEIVERS

25-1081 Appointment of receiver; grounds. A receiver may be appointed by the district court (1) in an action by a vendor to vacate a fraudulent purchase of property, by a creditor to subject any property or fund to his or her claim, or between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured, (2) in an action for the foreclosure of a mortgage or in an action to foreclose a trust deed as a mortgage when the mortgaged property or property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt secured by the mortgage or trust deed, (3) in connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default under the Nebraska Trust Deeds Act when the property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the debt secured by the trust deed, (4) in an action brought pursuant to section 52-1705 to enforce a written assignment of rents provision contained in any agreement and the agreement provides for the appointment of a receiver, (5) in any other case in which a mortgagor or trustor has agreed in writing to the appointment of a receiver, (6) after judgment or decree to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal, (7) in all cases provided for by special statutes, and (8) in all other cases when receivers have heretofore been appointed by the usages of courts of equity.

Source: R.S.1867, Code § 266, p. 437; R.S.1913, § 7810; C.S.1922, § 8754; C.S.1929, § 20-1081; R.S. 1943, § 25-1081; Laws 1991, LB 732, § 45; Laws 1993, LB 121, § 170; Laws 1994, LB 884, § 53; Laws 2007, LB99, § 1.
Effective date March 8, 2007.

Cross Reference

Attachment, receiver appointed, when, see sections 25-1018 to 25-1022.
Foreclosure of mortgages, see sections 25-2137 to 25-2155.
Industrial loan and investment company prohibited to act as receiver, see section 8-409.
Judgment debtor, receiver of property, when, see section 25-1573.
Nebraska Trust Deeds Act, see section 76-1018.

ARTICLE 12

EVIDENCE

(e) DOCUMENTARY EVIDENCE

Section.

(l) HEALTH PRACTITIONER PEER REVIEW COMMITTEE

(e) DOCUMENTARY EVIDENCE

25-1285 Judicial records of Nebraska and federal courts; how proved. A judicial record of this state, or of any other federal court of the United States, may be proved by producing the original or a copy thereof, certified by the clerk or the clerk's designee or the person having the legal custody thereof, authenticated by his or her seal of office, if there is one.

Source: R.S.1867, Code § 413, p. 462; R.S.1913, § 7978; C.S.1922, § 8919; C.S.1929, § 20-1285; Laws 2007, LB449, § 1.
Effective date September 1, 2007.

(l) HEALTH PRACTITIONER PEER REVIEW COMMITTEE

25-12,123 Peer review committee; proceedings and records; testimony; use in civil actions; limitation. The proceedings and records of a peer review committee of a state or local association or society composed of health practitioners licensed pursuant to the Uniform Credentialing Act shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a person licensed pursuant to the act arising out of the matters which are the subject of evaluation and review by such committee. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof, except that information, documents, or records otherwise available from original sources are not to be

construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee. Any documents or records which have been presented to the review committee by any witness shall be returned to the witness, if requested by him or her or if ordered to be produced by a court in any action, with copies thereof to be retained by the committee at its discretion. Any person who testifies before such committee or who is a member of such committee shall not be prevented from testifying as to matters within his or her knowledge, but such witness cannot be asked about his or her testimony before such a committee or opinions formed as a result of such committee hearings. Nothing in this section shall prohibit a court of record, after a hearing and for good cause arising from extraordinary circumstances being shown, from ordering the disclosure of such proceedings, minutes, records, reports, or communications.

Source: Laws 1982, LB 267, § 1; Laws 2007, LB463, § 1114.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

ARTICLE 16

JURY

Section.
25-1629.04. One-step qualifying and summoning system; procedure.

25-1629.04 One-step qualifying and summoning system; procedure. After a proposed jury list has been selected, the jury commissioner may require that each person listed on the proposed jury list be served with a summons, issued by the jury commissioner, to appear before the court at a time and place certain for jury duty. The jury qualification questionnaire may be sent together with the summons in a single mailing to a prospective juror. The summons may be served upon each juror by first-class, certified, or registered mail, or by personal service by a jury commissioner, the clerk, or other person authorized by the court. After the initial appearance of the juror, he or she shall appear for jury service in any court of the county as directed by the judge of any court during the term of jury service of the juror.

No person shall be guilty of contempt of court pursuant to section 25-1611 for failing to respond to a summons sent by first-class mail.

Source: Laws 1979, LB 234, § 15; Laws 2007, LB67, § 1.
Effective date September 1, 2007.

ARTICLE 19

REVERSAL OR MODIFICATION OF JUDGMENTS AND ORDERS BY APPELLATE COURTS

(a) REVIEW ON PETITION IN ERROR

Section.
25-1901. District court; appellate jurisdiction; scope.

(a) REVIEW ON PETITION IN ERROR

25-1901 District court; appellate jurisdiction; scope. A judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court, except that the district court shall not have jurisdiction over (1) appeals from a juvenile court as defined in section 43-245, (2) appeals from a county court in matters arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, in matters involving adoption or inheritance tax, or in domestic relations matters, or (3) appeals within the jurisdiction of the Tax Equalization and Review Commission.

Source: R.S.1867, Code § 580, p. 496; R.S.1913, § 8175; C.S.1922, § 9127; C.S.1929, § 20-1901; R.S.1943, § 25-1901; Laws 1972, LB 1032, § 136; Laws 1974, LB 733, § 2; Laws 1986, LB 529, § 22; Laws 1994, LB 1106, § 1; Laws 1995, LB 538, § 1; Laws 1996, LB 1296, § 4; Laws 2003, LB 130, § 115; Laws 2007, LB167, § 1.
Effective date February 10, 2007.

Cross Reference

Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(p) MISCELLANEOUS

Section.
25-21,188.02. Volunteer in free clinic or other facility; immunity; when.

(cc) HEALTH CARE PAYORS
25-21,247. Health care payor or employee; immunity from criminal or civil liability; when.

(nn) FIRE CONTROL OR RESCUE EQUIPMENT DONATIONS
25-21,282. Immunity from liability; exceptions.

(p) MISCELLANEOUS

25-21,188.02 Volunteer in free clinic or other facility; immunity; when. (1) A person credentialed under the Uniform Credentialing Act to practice as a physician,

osteopathic physician, pharmacist, dentist, physician assistant, nurse, or physical therapist who, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services, of a kind which are eligible for reimbursement under the medical assistance program established pursuant to the Medical Assistance Act, as a volunteer in a free clinic or other facility operated by a not-for-profit organization as defined in section 25-21,190, by an agency of the state, or by any political subdivision shall be immune from civil liability for any act or omission which results in damage or injury unless such damage or injury was caused by the willful or wanton act or omission of such practitioner.

(2) The individual immunity granted by subsection (1) of this section shall not extend to any act or omission of such practitioner which results in damage or injury if:

(a) The free clinic or other facility is operated by a licensed hospital;

(b) The practitioner has been disciplined by the professional board having oversight over that practitioner in the previous five years at the time of the act or omission causing injury; or

(c) The damage or injury is caused by such practitioner (i) during the operation of any motor vehicle, airplane, or boat or (ii) while impaired by alcohol or any controlled substance enumerated in section 28-405.

Source: Laws 2003, LB 146, § 7; Laws 2006, LB 1248, § 50; Laws 2007, LB463, § 1115. Operative date December 1, 2008.

Cross Reference

Medical Assistance Act, see section 68-901.
Uniform Credentialing Act, see section 38-101.

(cc) HEALTH CARE PAYORS

25-21,247 Health care payor or employee; immunity from criminal or civil liability; when. (1) For purposes of this section, health care payor shall include, but not be limited to:

(a) An insurer;

(b) A health maintenance organization;

(c) Medicare or medicaid;

(d) A legal entity which is self-insured and provides health care benefits for its employees; or

(e) A person responsible for administering the payment of health care expenses for another person or entity.

(2) Any health care payor or employee thereof who has reasonable cause to believe that there has been a violation of section 38-178 or 38-179 or a fraudulent insurance act described in the Insurance Fraud Act or section 28-631 may discuss or inquire of other health care payors about such violation or act. Any health care payor or employee so discussing or inquiring or responding to such an inquiry from another health care payor shall be immune from criminal penalty or from civil liability for slander, libel, defamation, or breach of the physician-patient privilege if the discussion, inquiry, or response is made in good faith without reckless disregard for the truth.

Source: Laws 1994, LB 1223, § 131; Laws 1995, LB 385, § 9; Laws 2007, LB463, § 1116. Operative date December 1, 2008.

Cross Reference

Insurance Fraud Act, see section 44-6601.

(nn) FIRE CONTROL OR RESCUE EQUIPMENT DONATIONS

25-21,282 Immunity from liability; exceptions. (1) A person who donates fire control or rescue equipment to a fire department or a political subdivision for use by its fire department shall not be liable for civil damages for personal injuries, property damage or loss, or death caused by the fire control or rescue equipment after donation, except for injury, damage, loss, or death caused by the donor's intentional or reckless conduct or gross negligence.

(2) Subsection (1) of this section shall not apply to a vendor or manufacturer of fire control or rescue equipment.

(3) For purposes of this section:

(a) Fire control or rescue equipment means any vehicle, equipment, tool, communications equipment, or protective gear used in firefighting, rescue services, or emergency medical services;

(b) Fire department means any paid or volunteer fire department, company, association, or organization or first-aid, rescue, or emergency squad serving a city, village, county, township, or rural or suburban fire protection district or any other public or private fire department; and

(c) Person means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, fire department, public corporation, other legal or commercial entity, or governmental subdivision, agency, or instrumentality.

Source: Laws 2007, LB160, § 1. Effective date September 1, 2007.

ARTICLE 27

PROVISIONS APPLICABLE TO COUNTY COURTS

(f) APPEALS

Section.

(f) APPEALS

25-2732 Testimony; preservation; bill of exceptions; cost. (1) Testimony in all civil and criminal cases in county court shall be preserved by multi-track recorders, but the court may order the use of a court reporter in any case.

(2) Standards for equipment for recording testimony and rules for using such equipment shall be prescribed by the Supreme Court. Such standards shall require that the equipment

be capable of multiple-track recording and of instantaneous monitoring by the clerk or other court employee operating the equipment.

(3) The transcription of such testimony, when certified to by the stenographer or court reporter who made it and settled by the court as such, shall constitute the bill of exceptions in the case. The cost of preparing the bill of exceptions shall be paid initially by the party for whom it is prepared.

(4) The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be governed by rules of practice prescribed by the Supreme Court.

Source: Laws 1981, LB 42, § 5; Laws 1984, LB 13, § 23; Laws 1986, LB 529, § 15; R.S.Supp.,1988, § 24-541.05; Laws 2007, LB213, § 2.
Effective date September 1, 2007.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section.
25-2911. Dispute resolution; types of cases; referral of cases.

(a) DISPUTE RESOLUTION ACT

25-2911 Dispute resolution; types of cases; referral of cases. (1) The following types of cases may be accepted for dispute resolution at an approved center:

(a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations; and

(c) Juvenile offenses and disputes involving juveniles.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Source: Laws 1991, LB 90, § 11; Laws 2007, LB554, § 25.
Operative date January 1, 2008.

Cross Reference

Farm Mediation Act, see section 2-4801.

CHAPTER 27
COURTS; RULES OF EVIDENCE

ARTICLE 5

PRIVILEGES

27-504 Rule 504. Physician-patient privilege; professional counselor-client privilege; definitions; general rule of privilege; who may claim privilege; exceptions to the privilege. (1) As used in this rule:

(a) A patient is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his or her physical, mental, or emotional condition;

(b) A physician is (i) a person authorized to practice medicine in any state or nation or who is reasonably believed by the patient so to be or (ii) a person licensed as a psychologist under the laws of any state or nation who devotes all or a part of his or her time to the practice of psychology;

(c) A client is a person who consults or is interviewed by a professional counselor for professional counseling as defined in section 38-2118;

(d) A professional counselor is a person certified as a professional counselor pursuant to section 38-2132; and

(e) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of (i) the patient in the consultation, examination, or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family, or (ii) the client participating in professional counseling by a professional counselor.

(2)(a) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his or her physical, mental, or emotional condition among himself or herself, his or her physician, or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(b) A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made during counseling between himself or herself,

his or her professional counselor, or persons who are participating in the counseling under the direction of the professional counselor, including members of the client's family.

(3) The privilege may be claimed by the patient or client, by his or her guardian or conservator, or by the personal representative of a deceased patient or client. The person who was the physician or professional counselor may claim the privilege but only on behalf of the patient or client. His or her authority so to do is presumed in the absence of evidence to the contrary.

(4)(a) There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for physical, mental, or emotional illness if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization or if a professional counselor deems it necessary to refer a client to determine if there is need for hospitalization.

(b) If the judge orders an examination of the physical, mental, or emotional condition of the patient, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) There is no privilege under this rule as to communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(d) There is no privilege under this rule in any judicial proceedings under the Nebraska Juvenile Code regarding injuries to children, incompetents, or disabled persons or in any criminal prosecution involving injury to any such person or the willful failure to report any such injuries.

(e) There is no privilege under this rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in section 28-401 shall apply.

Source: Laws 1975, LB 279, § 24; Laws 1988, LB 273, § 1; Laws 1988, LB 790, § 1; Laws 1990, LB 571, § 1; Laws 1992, LB 1019, § 29; Laws 1993, LB 130, § 1; Laws 1994, LB 1210, § 2; Laws 2007, LB463, § 1117.
Operative date December 1, 2008.

Cross Reference

Nebraska Juvenile Code, see section 43-2,129.

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. (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 Licensing Law 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.
Effective date September 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Uniform Licensing Law, see section 71-101.

CHAPTER 28
CRIMES AND PUNISHMENTS

Article.

ARTICLE 1

PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section.

(a) GENERAL PROVISIONS

28-101 Code, how cited. Sections 28-101 to 28-1350 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. Effective date September 1, 2007.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section.

(b) ADULT PROTECTIVE SERVICES ACT

(a) GENERAL PROVISIONS

28-322.04 Sexual abuse of a protected individual; penalties. (1) For purposes of this section:

(a) Person means an individual employed by the Department of Health and Human Services and includes, but is not limited to, any individual working in central administration or regional service areas or facilities of the department and any individual to whom the department has authorized or delegated control over a protected individual or a protected individual's activities, whether by contract or otherwise; and

(b) Protected individual means an individual in the care or custody of the department.

(2) A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact.

(3) Any person who subjects a protected individual to sexual penetration is guilty of sexual abuse of a protected individual in the first degree. Sexual abuse of a protected individual in the first degree is a Class III felony.

(4) Any person who subjects a protected individual to sexual contact is guilty of sexual abuse of a protected individual in the second degree. Sexual abuse of a protected individual in the second degree is a Class IV felony.

Source: Laws 2003, LB 17, § 2; Laws 2007, LB296, § 26.
Operative date July 1, 2007.

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 sections 71-102 to 71-110;

(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; and

(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.

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.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

28-328 Partial-birth abortion; prohibition; violation; penalties. (1) No partial-birth abortion shall be performed in this state, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(2) The intentional and knowing performance of an unlawful partial-birth abortion in violation of subsection (1) of this section is a Class III felony.

(3) No woman upon whom an unlawful partial-birth abortion is performed shall be prosecuted under this section or for conspiracy to violate this section.

(4) The intentional and knowing performance of an unlawful partial-birth abortion shall result in the automatic suspension and revocation of an attending physician's license to practice medicine in Nebraska by the Division of Public Health pursuant to sections 38-177 to 38-1,102.

(5) Upon the filing of criminal charges under this section by the Attorney General or a county attorney, the Attorney General shall also file a petition to suspend and revoke the attending physician's license to practice medicine pursuant to section 38-186. A hearing on such administrative petition shall be set in accordance with section 38-188. At such hearing, the attending physician shall have the opportunity to present evidence that the physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. A defendant against whom criminal charges are brought under this section may bring a motion to delay the beginning of the trial until after the entry of an order by the Director of Public Health pursuant to section 38-196. The findings of the director as to whether the attending physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, shall be admissible in the criminal proceedings brought pursuant to this section.

Source: Laws 1997, LB 23, § 3; Laws 2007, LB296, § 28; Laws 2007, LB463, § 1118.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 28, with LB 463, section 1118, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

28-343 Department of Health and Human Services; abortion reporting form; items included; confidential. The Department of Health and Human Services shall prescribe an abortion reporting form which shall be used for the reporting of every abortion performed in this state. Such form shall include the following items:

(1) The age of the pregnant woman;

(2) The location of the facility where the abortion was performed;

(3) The type of procedure performed;

(4) Complications, if any;

(5) The name of the attending physician;

(6) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

(7) The stated reason or reasons for which the abortion was requested;

(8) The state of the pregnant woman's legal residence;

(9) The length and weight of the aborted child, when measurable;

(10) Whether an emergency situation caused the physician to waive any of the requirements of section 28-327; and

(11) Such other information as may be prescribed in accordance with section 71-602.

The completed form shall be signed by the attending physician and sent to the department within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable. The abortion reporting form shall not include the name of the person upon whom the abortion was performed. The abortion reporting form shall be confidential and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

Source: Laws 1977, LB 38, § 58; Laws 1979, LB 316, § 9; Laws 1984, LB 695, § 8; Laws 1989, LB 344, § 2; Laws 1996, LB 1044, § 63; Laws 1997, LB 307, § 2; Laws 2007, LB296, § 29.
Operative date July 1, 2007.

28-345 Department of Health and Human Services; permanent file; rules and regulations. The Department of Health and Human Services shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms pursuant to such rules and regulations as established by the department, which compilations shall be a matter of public record. Under no circumstances shall the compilations of information include the name of any attending physician or identify in any respect facilities where abortions are performed. The department, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1977, LB 38, § 60; Laws 1979, LB 316, § 10; Laws 1996, LB 1044, § 64; Laws 2007, LB296, § 30.
Operative date July 1, 2007.

(b) ADULT PROTECTIVE SERVICES ACT

28-356 Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 1988, LB 463, § 9; Laws 1996, LB 1044, § 65; Laws 2006, LB 994, § 51; Laws 2007, LB296, § 31.
Operative date July 1, 2007.

28-372 Report of abuse; required; contents; notification; toll-free number established. (1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has

reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse; (d) any evidence of previous abuse including the nature and extent of the abuse; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse.

Source: Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32.
Operative date July 1, 2007.

28-377 Records relating to abuse; access. Except as otherwise provided in sections 28-376 to 28-380, no person, official, or agency shall have access to the records relating to abuse unless in furtherance of purposes directly connected with the administration of the Adult Protective Services Act and section 28-726. Persons, officials, and agencies having access to such records shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A county attorney in preparation of an abuse petition;

(3) A physician who has before him or her a person whom he or she reasonably suspects may be abused;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused vulnerable adult;

(5) Defense counsel in preparation of the defense of a person charged with abuse;

(6) Any person engaged in bona fide research or auditing, except that no information identifying the subjects of the report shall be made available to the researcher or auditor. The

researcher shall be charged for any costs of such research incurred by the department at a rate established by rules and regulations adopted and promulgated by the department;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as the act existed on September 1, 2001, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness; and

(8) For purposes of licensing providers of child care programs, the department.

Source: Laws 1988, LB 463, § 30; Laws 1992, LB 643, § 1; Laws 2001, LB 214, § 1; Laws 2007, LB296, § 33.
Operative date July 1, 2007.

28-380 Amendment or expungement of records; inaccurate or inconsistent with act; procedure. At any time subsequent to the completion of the department's investigation, if a vulnerable adult, the guardian of a vulnerable adult, or a person who allegedly abused a vulnerable adult and who is mentioned in a report believes the information in the report is inaccurate or being maintained in a manner inconsistent with the Adult Protective Services Act, such person may request the department to amend or expunge identifying information from the report or remove the record of such report from the registry. If the department refuses to do so or does not act within thirty days, the vulnerable adult or person who allegedly abused a vulnerable adult shall have the right to a hearing to determine whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with such act. Such hearing shall be held within a reasonable time after a request is made and at a reasonable place and hour. At the hearing the burden of proving the accuracy and consistency of the record shall be on the department. The hearing shall be conducted by the chief executive officer of the department or his or her designated representative, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make such record accurate or consistent with the requirements of the Adult Protective Services Act. The decision shall be made in writing within thirty days of the close of the hearing and shall state the reasons upon which it is based. Decisions of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 463, § 33; Laws 1996, LB 1044, § 67; Laws 2006, LB 994, § 53; Laws 2007, LB296, § 34.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 4

DRUGS AND NARCOTICS

Section.

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, 2003, 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, 2003, (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, 2003, 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; and

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 1, with LB 296, section 35, and LB 463, section 1119, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

28-401.01 Act, how cited. Sections 28-401 to 28-456.01 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120.
Operative date December 1, 2008.

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-phenylpropanamide, 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-(B-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-a-methylphenethylamine; and 4-bromo-2,5-DMA;

(5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-a-methyl-phenethylamine; 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-a-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-6,6B,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-a-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-lH-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; and

(33) 5-Methoxy-N, N-diisopropyltryptamine, which is also known as 5-MeO-DIPT.

(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; and 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) Thebaine; and

(xvii) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Pethidine or meperidine;

(14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(17) Phenazocine;

(18) Piminodine;

(19) Racemethorphan;

(20) Racemorphan;

(21) Dihydrocodeine;

(22) Bulk propoxyphene in nondosage forms;

(23) Sufentanil;

(24) Alfentanil;

(25) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil; 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) Dehydrochlormethyltestosterone;

(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 isomer of a drug or substance described or listed in this subdivision if the salt, ester, or isomer 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-o1 or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meprobamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;

(16) Paraldehyde;

(17) Petrichloral;

(18) Phenobarbital;

(19) Prazepam;

(20) Alprazolam;

(21) Bromazepam;

(22) Camazepam;
(23) Clobazam;
(24) Clotiazepam;
(25) Cloxazolam;
(26) Delorazepam;
(27) Estazolam;
(28) Ethyl loflazepate;
(29) Fludiazepam;
(30) Flunitrazepam;
(31) Halazepam;
(32) Haloxazolam;
(33) Ketazolam;
(34) Loprazolam;
(35) Lorazepam;
(36) Lormetazepam;
(37) Medazepam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazolam;
(42) Pinazepam;
(43) Temazepam;
(44) Tetrazepam;
(45) Triazolam;
(46) Midazolam;
(47) Quazepam;
(48) Zolpidem;
(49) Dichloralphenazone; and
(50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;
(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms; and

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers are excepted from subdivision (g)(1) of Schedule IV if they may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act, as the act existed on September 1, 2001; are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and 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:

(A) Primatene Tablets;

(B) Bronkaid Dual Action Caplets; and

(C) Pazo Hemorrhoidal Ointment.

(3) Food and dietary supplements described in 21 U.S.C. 321, as such section existed on September 1, 2001, containing ephedrine, including its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if:

(A) They are labeled in a manner consistent with section 28-448 and bear the statements: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.";

(B) Any dosage form of the food or dietary supplements (i) does not contain any hydrochloride or sulfate salts of ephedrine alkaloids, (ii) does not contain more than twenty-five milligrams of ephedrine alkaloids, and (iii) does not contain ephedrine alkaloids in excess of five percent of the total capsule weight;

(C) They 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; and

(D) Analysis of the product is provided to the department to ensure that the product meets the requirements of subdivision (g)(3)(B) of Schedule IV.

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.
Operative date June 1, 2007.

28-409 Registrant; disciplinary action; grounds; procedure. (1) A registration pursuant to section 28-408 to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be denied, suspended, revoked, or renewal refused by the department upon a finding that the applicant or registrant:

(a) Has falsified any application filed pursuant to the Uniform Controlled Substances Act or required by the act;

(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state or has been convicted of a violation relating to any substance defined in the act as a controlled substance subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state;

(c) Has had his or her federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the prescribing, manufacturing, distribution, or dispensing of controlled substances;

(d) Is guilty of any of the acts or offenses listed in section 38-178 for which disciplinary measures may be taken against his or her license, certificate, or registration to practice and which have a rational connection with his or her fitness to prescribe, administer, or dispense a controlled substance. The department may automatically revoke or suspend the registration of a practitioner who has had his or her license, certificate, or registration to practice revoked or suspended and is no longer authorized to prescribe, administer, or dispense under the laws of this state or who has had his or her license, certificate, or registration to practice limited or restricted and is no longer authorized to prescribe, administer, or dispense controlled substances under the laws of this state;

(e) Is habitually intoxicated or is dependent upon or actively addicted to alcohol or any controlled substance or narcotic drug; or

(f) Has violated the Uniform Controlled Substances Act or any rules or regulations adopted and promulgated pursuant to the act.

(2) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) A person whose registration or renewal has been denied, revoked, or suspended shall be afforded an opportunity for a hearing in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Uniform Controlled Substances Act or any law of the state, except that such proceedings may be consolidated with proceedings under the Uniform Credentialing Act. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing, except in cases when the department finds that there is an imminent danger to the public health or safety.

(4) The department may suspend any registration simultaneously with the institution of proceedings under this section or when renewal of registration is refused in cases when the department finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial

review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(5) In the event the department suspends or revokes a registration granted under section 28-408, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the department be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

(6) The administration shall be promptly notified of all orders limiting, suspending, or revoking registration.

Source: Laws 1977, LB 38, § 69; Laws 1985, LB 323, § 5; Laws 1991, LB 456, § 1; Laws 1994, LB 1210, § 5; Laws 2001, LB 398, § 7; Laws 2007, LB463, § 1121.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.
Uniform Credentialing Act, see section 38-101.

28-412 Narcotic drugs; administration to narcotic-dependent person; violation; penalty. (1) It is unlawful to prescribe any narcotic drug listed in section 28-405, except buprenorphine, for the purpose of detoxification treatment or maintenance treatment except as provided in this section.

(2) A narcotic drug may be administered or dispensed to a narcotic-dependent person for detoxification treatment or maintenance treatment by a practitioner who is registered to provide detoxification treatment or maintenance treatment pursuant to section 28-406.

(3) A narcotic drug may be administered or dispensed to a narcotic-dependent person when necessary to relieve acute withdrawal symptoms pending the referral of such person for detoxification treatment or maintenance treatment by a physician who is not registered to provide detoxification treatment or maintenance treatment under section 28-406. Not more than one day's supply of narcotic drugs shall be administered or dispensed for such person's use at one time. Such treatment shall not be continued for more than three successive calendar days and may not be renewed or extended.

(4) A narcotic drug may be administered or dispensed in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment conditions other than dependence.

(5) Any person who violates this section is guilty of a Class IV felony.

(6) For purposes of this section:

(a) Detoxification treatment means the administering or dispensing of a narcotic drug in decreasing doses to a person for a specified period of time to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a

narcotic drug and to bring such person to a narcotic drug-free state within such period of time. Detoxification treatment includes short-term detoxification treatment and long-term detoxification treatment;

(b) Long-term detoxification treatment means detoxification treatment for a period of more than thirty days but not more than one hundred eighty days;

(c) Maintenance treatment means the administering or dispensing of a narcotic drug in the treatment of a narcotic-dependent person for a period of more than twenty-one days; and

(d) Short-term detoxification treatment means detoxification treatment for a period of not more than thirty days.

Source: Laws 1977, LB 38, § 72; Laws 1996, LB 1044, § 70; Laws 1996, LB 1108, § 3; Laws 1999, LB 379, § 2; Laws 1999, LB 594, § 3; Laws 2001, LB 398, § 10; Laws 2007, LB247, § 3. Operative date June 1, 2007.

28-414 Controlled substance; medical order; 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 medical order 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 in a hospice licensed under the Health Care Facility Licensure Act or certified under Title XVIII of the federal Social Security Act, as such title existed on May 1, 2001, 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 filed separately from other prescriptions in a single 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.

(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 members of the healing arts 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 members of the healing arts 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 responsible parties acting on behalf of the pharmacy, one of whom must be a member of the healing arts.

(iv) When the owner is a resident of a long-term care facility or hospital, the long-term care facility or hospital shall assure that controlled substances are destroyed as follows:

(A) If the controlled substance is listed in Schedule II or III of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and a member of the healing arts; or

(B) If the controlled substance is listed in Schedule IV or V of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and another responsible adult.

(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 files, 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.

(4) For purposes of this section, long-term care facility has the same meaning as long-term care hospital in section 71-422 and includes an intermediate care facility for the mentally retarded as defined in section 71-421.

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. Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

28-419 Inhaling or drinking certain intoxicating substances; unlawful. No person shall breathe, inhale, or drink any compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene

dichloride, ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting, or disturbing the auditory, visual, mental, or nervous processes. For the purposes of sections 28-419 to 28-424, any such condition so induced shall be deemed an intoxicated condition.

Source: Laws 1977, LB 38, § 79; Laws 2007, LB424, § 1.
Effective date September 1, 2007.

28-435 Licensee; reporting and investigation duties. Every licensee subject to the Uniform Controlled Substances Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

Source: Laws 2007, LB463, § 1123.
Operative date December 1, 2008.

28-435.01 Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Controlled Substances Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one

thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1124.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

28-435.02 Insurer; duty to report violations. (1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Uniform Controlled Substances Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

Source: Laws 2007, LB463, § 1125.
Operative date December 1, 2008.

28-435.03 Clerk of county or district court; report convictions and judgments; Attorney General or city or county prosecutor; provide information. The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Uniform Controlled Substances Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the

license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

Source: Laws 2007, LB463, § 1126.
Operative date December 1, 2008.

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, except that this requirement does not apply to liquid pediatric formulations. For the purposes of this subdivision, liquid pediatric formulation means a liquid formulation with pseudoephedrine doses of fifteen milligrams or less that is manufactured and marketed for children twelve years of age or younger. If it is documented by a law enforcement agency to the Nebraska State Patrol that a liquid pediatric formulation has been found at a methamphetamine manufacturing site, the patrol shall present the documentation to the chief medical officer, as described in section 81-3115, who shall issue an order removing the exemption.

(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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 218, section 1, with LB 296, section 36, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 218 became effective September 1, 2007.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section.

28-713 Reports of child abuse or neglect; law enforcement agency; department; duties. Upon the receipt of a call reporting child abuse and neglect as required by section 28-711:

(1) It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate. In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the law enforcement agency shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline or the department of receipt of the report, including

whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department;

(2) In situations of alleged out-of-home child abuse or neglect if the person or persons to be notified have not already been notified and the person to be notified is not the subject of the report of child abuse or neglect, the department shall immediately notify the person or persons having custody of each child who has allegedly been abused or neglected that such report of alleged child abuse or neglect has been made and shall provide such person or persons with information of the nature of the alleged child abuse or neglect and any other information that the department deems necessary. The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family;

(3) The department may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;

(4) The department shall, by the next working day after receiving a report of child abuse or neglect under subdivision (1) of this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken; and

(5) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

Source: Laws 1977, LB 38, § 152; Laws 1979, LB 505, § 4; Laws 1982, LB 522, § 5; Laws 1988, LB 463, § 45; Laws 1992, LB 1184, § 10; Laws 1996, LB 1044, § 72; Laws 1997, LB 119, § 2; Laws 1997, LB 307, § 13; Laws 2005, LB 116, § 3; Laws 2007, LB296, § 37.
Operative date July 1, 2007.

28-721 Central register; record; amend, expunge, or remove. At any time, the department may amend, expunge, or remove from the central register of child protection cases maintained pursuant to section 28-718 any record upon good cause shown and upon notice to the subject of the report of child abuse or neglect.

Source: Laws 1979, LB 505, § 9; Laws 2005, LB 116, § 13; Laws 2007, LB296, § 38.
Operative date July 1, 2007.

28-726 Information; access. Except as provided in this section and sections 28-722 and 28-734 to 28-739, no person, official, or agency shall have access to information in the tracking system of child protection cases maintained pursuant to section 28-715 or in records in the central register of child protection cases maintained pursuant to section 28-718 unless in furtherance of purposes directly connected with the administration of the Child Protection Act. Such persons, officials, and agencies having access to such information shall include, but not be limited to:

(1) A law enforcement agency investigating a report of known or suspected child abuse or neglect;

(2) A county attorney in preparation of a child abuse or neglect petition or termination of parental rights petition;

(3) A physician who has before him or her a child whom he or she reasonably suspects may be abused or neglected;

(4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused or neglected child or a parent, a guardian, or other person responsible for the abused or neglected child's welfare who is the subject of the report of child abuse or neglect;

(5) Any person engaged in bona fide research or auditing. No information identifying the subjects of the report of child abuse or neglect shall be made available to the researcher or auditor;

(6) The State Foster Care Review Board when the information relates to a child in a foster care placement as defined in section 43-1301. The information provided to the state board shall not include the name or identity of any person making a report of suspected child abuse or neglect;

(7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, as the act existed on January 1, 2005, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as the act existed on September 1, 2001, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness;

(8) The person or persons having custody of the abused or neglected child in situations of alleged out-of-home child abuse or neglect; and

(9) For purposes of licensing providers of child care programs, the Department of Health and Human Services.

Source: Laws 1979, LB 505, § 14; Laws 1982, LB 522, § 9; Laws 1988, LB 463, § 47; Laws 1990, LB 1222, § 1; Laws 1992, LB 643, § 2; Laws 1994, LB 1035, § 7; Laws 1997, LB 119, § 4; Laws 2001, LB 214, § 2; Laws 2002, LB 642, § 8; Laws 2005, LB 116, § 18; Laws 2007, LB296, § 39. Operative date July 1, 2007.

28-728 Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties. (1) The Legislature finds that child abuse and neglect are community problems requiring a cooperative complementary response by law enforcement, child advocacy centers, prosecutors, the Department of Health and Human Services, and other agencies or entities designed to protect children. It is the intent of the Legislature to create a child abuse and neglect investigation team in each county or contiguous group of counties and to create a child abuse and neglect treatment team in each county or contiguous group of counties.

(2) Each county or contiguous group of counties will be assigned by the Department of Health and Human Services to a child advocacy center. The purpose of a child advocacy center is to provide a child-focused response to support the physical, emotional, and psychological

needs of children who are victims of abuse or neglect. Each child advocacy center shall meet accreditation criteria set forth by the National Children's Alliance. Nothing in this section shall prevent a child from receiving treatment or other services at a child advocacy center which has received or is in the process of receiving accreditation.

(3) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect investigation team and ensuring that protocols are established and implemented. A representative of the child advocacy center assigned to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Conducting joint investigations of child abuse and other child abuse and neglect matters which the team deems necessary;

(b) Ensuring that a law enforcement agency will participate in the investigation;

(c) Conducting joint investigations of other child abuse and neglect matters which the team deems necessary;

(d) Arranging for a videotaped forensic interview at a child advocacy center for children sixteen years of age or younger who are alleging sexual abuse or serious physical abuse or neglect or who have witnessed a violent crime, been removed from a clandestine drug lab, or been recovered from a kidnapping;

(e) Reducing the risk of harm to child abuse and neglect victims;

(f) Ensuring that the child is in safe surroundings, including removing the perpetrator when necessary;

(g) Sharing of case information;

(h) How and when the team will meet; and

(i) Responding to drug-endangered children.

(4) Each county attorney or the county attorney representing a contiguous group of counties is responsible for convening the child abuse and neglect treatment team and ensuring that protocols are established and implemented. A representative of the child advocacy center appointed to the team shall assist the county attorney in facilitating case review, developing and updating protocols, and arranging training opportunities for the team. Each team must have protocols which, at a minimum, shall include procedures for:

(a) Case coordination and assistance, including the location of services available within the area;

(b) Case staffings and the coordination, development, implementation, and monitoring of treatment plans;

(c) Reducing the risk of harm to child abuse and neglect victims;

(d) Assisting those child abuse and neglect victims who are abused and neglected by perpetrators who do not reside in their homes;

(e) How and when the team will meet; and

(f) Working with multiproblem delinquent youth.

Source: Laws 1992, LB 1184, § 1; Laws 1996, LB 1044, § 73; Laws 1999, LB 594, § 6; Laws 2006, LB 1113, § 24; Laws 2007, LB296, § 40.
Operative date July 1, 2007.

28-734 Child fatality or near fatality; terms, defined. For purposes of sections 28-734 to 28-739:

(1) Child fatality means the death of a child from suspected abuse, neglect, or maltreatment as determined by the county coroner or county attorney;

(2) Department means the Department of Health and Human Services;

(3) Findings and information means a written summary as described in section 28-736; and

(4) Near fatality means a case in which an examining physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

Source: Laws 2002, LB 642, § 1; Laws 2007, LB296, § 41.
Operative date July 1, 2007.

28-735 Child fatality or near fatality; disclosure; when. Notwithstanding any other provision of law and subject to sections 28-734 to 28-739, the department shall disclose to the public, upon request, a summary of the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality and is convicted or acquitted of the charged offense or a lesser offense; or

(2) A county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's prior death.

Source: Laws 2002, LB 642, § 2; Laws 2007, LB296, § 42.
Operative date July 1, 2007.

28-736 Child fatality or near fatality; disclosure; contents. Findings and information disclosed pursuant to section 28-735 shall consist of a written summary that includes any of the following information the department is able to provide:

(1) The dates, outcomes, and results of any actions taken or services rendered by the department; and

(2) Confirmation of the receipt of all reports, accepted or not accepted, by the local office of the department for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the department's determination.

This section does not authorize access to confidential records in the custody of the department or disclosure to the public of the records or the content of any psychiatric, psychological, or therapeutic evaluations or of information that would reveal the identities of persons who provided information related to suspected child abuse, neglect, or maltreatment.

Source: Laws 2002, LB 642, § 3; Laws 2007, LB296, § 43.
Operative date July 1, 2007.

28-737 Child fatality or near fatality; disclosure request; procedure. Within five working days after receipt of a request for a summary of the findings and information related to a child fatality or near fatality, the department shall consult with the appropriate county attorney and provide the findings and information unless the department or county attorney has reasonable cause to believe that the release of the information:

(1) Is not authorized by section 28-735;

(2) Is likely to cause mental, emotional, or physical harm or danger to a minor child residing in the household of the deceased or injured child or who is the sibling of the deceased or injured child;

(3) Is the subject of an ongoing or future criminal investigation or prosecution;

(4) Is not authorized by federal law and regulations; or

(5) Could result in physical or emotional harm to an individual.

Source: Laws 2002, LB 642, § 4; Laws 2007, LB296, § 44.
Operative date July 1, 2007.

28-738 Child fatality or near fatality; disclosure request; denial; appeal. A person whose request under section 28-737 is denied may apply to the district court of Lancaster County for an order compelling disclosure of a summary of the findings and information by the department. The application shall set forth with reasonable particularity factors supporting the application. Actions under this section shall be set for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the district court has reviewed the specific findings and information in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances set out in section 28-737 exist.

Source: Laws 2002, LB 642, § 5; Laws 2007, LB296, § 45.
Operative date July 1, 2007.

ARTICLE 8

OFFENSES RELATING TO MORALS

Section.
28-833. Enticement by electronic communication device; penalty.

28-833 Enticement by electronic communication device; penalty. (1) A person commits the offense of enticement by electronic communication device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

(a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;

(b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02; or

(c) Offers or solicits any indecent, lewd, or lascivious act.

(2) Enticement by electronic communication device is a Class IV felony.

(3) Enticement by electronic communication device is deemed to have been committed either at the place where the communication was initiated or where it was received.

(4) For purposes of this section, electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.

Source: Laws 2007, LB142, § 2.
Effective date September 1, 2007.

ARTICLE 9

OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section.
28-915.01. False statement under oath or affirmation; penalty; applicability of section.

28-915.01 False statement under oath or affirmation; penalty; applicability of section. (1) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class I misdemeanor if the falsification:

(a) Occurs in an official proceeding; or

(b) Is intended to mislead a public servant in performing his or her official function.

(2) A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he or she does not believe the statement to be true, is guilty of a Class II misdemeanor if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(3) Subsections (4) through (7) of section 28-915 shall apply to subsections (1) and (2) of this section.

(4) This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1987, LB 451, § 4; Laws 2007, LB464, § 1.
Effective date September 1, 2007.

Cross Reference

Campaign Finance Limitation Act, see section 32-1601.
Nebraska Political Accountability and Disclosure Act, see section 49-1401.

ARTICLE 10

OFFENSES AGAINST ANIMALS

Section.

28-1008 Terms, defined. For purposes of sections 28-1008 to 28-1017:

(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) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(7) 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; and

(8) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

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.
Effective date September 1, 2007.

Cross Reference

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009 Abandonment; cruel neglect; harassment of a police animal; penalty. (1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal

is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IV felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IV felony.

Source: Laws 1990, LB 50, § 2; Laws 1995, LB 283, § 3; Laws 2002, LB 82, § 6; Laws 2003, LB 273, § 5; Laws 2007, LB227, § 2.
Effective date September 1, 2007.

28-1013 Sections; exemptions. Sections 28-1008 to 28-1017 shall not apply to:

(1) Care or treatment of an animal by a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act;

(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 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, 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.
Operative date December 1, 2008.

Cross Reference
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

ARTICLE 13

MISCELLANEOUS OFFENSES

(a) DEAD HUMAN BODIES

Section.
28-1301. Human skeletal remains or burial goods; prohibited acts; penalty.

(h) PICKETING
28-1317. Unlawful picketing; penalty.
28-1318. Mass picketing, defined; penalty; display of sign required.

(a) DEAD HUMAN BODIES

28-1301 Human skeletal remains or burial goods; prohibited acts; penalty. (1) The definitions found in section 12-1204 shall apply to this section.

(2) Except as provided in subsection (3) of this section, a person commits the offense of removing, abandoning, or concealing human skeletal remains or burial goods if he or she:

(a) Knowingly digs up, disinters, removes, or carries away from its place of deposit or burial any such remains or goods, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done;

(b) Knowingly throws away or abandons any such remains or goods in any place other than a regular place for burial and under a proper death certificate issued under section 38-811 or 71-605; or

(c) Receives, conceals, purchases, sells, transports, trades, or disposes of any such remains or goods if the person knows or has reason to know that such remains or goods have been dug up, disinterred, or removed from their place of deposit or burial or have not been reported in a proper death certificate issued under section 38-811 or 71-605, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done.

(3) This section shall not apply to: (a) A body authorized to be surrendered for purposes of dissection as provided by law; (b) the body of any person directed to be delivered by competent authority for purposes of dissection; (c) the officers of any lawfully constituted cemetery acting under the direction of the board of trustees in removing any human skeletal remains or burial goods from one place of burial in the cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made pursuant to section 71-605; (d) any person removing the human skeletal remains or burial goods of a relative or intimate friend from one place of burial in any lawfully constituted

cemetery to another when consent for such removal has been obtained from the lawfully constituted authority thereof and permits for disinterment and reinterment secured and return made pursuant to section 71-605; (e) any professional archaeologist engaged in an otherwise lawful and scholarly excavation of a nonburial site who unintentionally encounters human skeletal remains or associated burial goods if the archaeologist complies with the notification requirements of the Unmarked Human Burial Sites and Skeletal Remains Protection Act; or (f) any archaeological excavation by the Nebraska State Historical Society or its designee in the course of execution of the duties of the society if any human skeletal remains or associated burial goods discovered during such excavation are disposed of pursuant to section 12-1208.

(4) Violation of this section shall be a Class IV felony.

Source: Laws 1977, LB 38, § 285; Laws 1989, LB 340, § 13; Laws 2003, LB 95, § 32; Laws 2007, LB463, § 1128.
Operative date December 1, 2008.

Cross Reference

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

(h) PICKETING

28-1317 Unlawful picketing; penalty. (1) A person commits the offense of unlawful picketing if, either singly or by conspiring with others, he or she interferes, or attempts to interfere, with any other person in the exercise of his or her lawful right to work, or right to enter upon or pursue any lawful employment he or she may desire, in any lawful occupation, self-employment, or business carried on in this state, by:

(a) Using threatening language toward such person or any member of his or her immediate family, or in his, her, or their presence or hearing, for the purpose of inducing or influencing, or attempting to induce or influence, such person to quit his or her employment, or to refrain from seeking or freely entering into employment; or

(b) Following or intercepting such person from or to his or her work, from or to his or her home or lodging, or about the city, against the will of such person, for such purpose; or

(c) Menacing, threatening, coercing, intimidating, or frightening in any manner such person for such purpose; or

(d) Committing an assault upon such person for such purpose; or

(e) Picketing or patrolling the place of residence of such person, or any street, alley, road, highway, or any other place, where such person may be, or in the vicinity thereof, for such purpose, against the will of such person.

(2) Unlawful picketing is a Class III misdemeanor. Each violation shall constitute a separate offense.

Source: Laws 1977, LB 38, § 301; Laws 2007, LB1, § 1.
Effective date September 1, 2007.

28-1318 Mass picketing, defined; penalty; display of sign required. (1) Mass picketing shall mean any form of picketing in which pickets constitute an obstacle to the free ingress and egress to and from the premises being picketed or any other premises, or upon the public roads, streets, or highways, either by obstructing by their persons or by the placing of vehicles or other physical obstructions.

(2) A person commits the offense of mass picketing if singly or in concert with others, he or she engages in or aids and abets any form of picketing activity that constitutes mass picketing as defined in subsection (1) of this section.

(3) Mass picketing is a Class III misdemeanor. Each violation shall constitute a separate offense.

(4) Any person who shall legally picket by any means or methods other than those forbidden in this section or in section 28-1317 shall visibly display on his or her person a sign showing the name of the protesting organization he or she represents. The composition of the sign shall be uppercase lettering of not less than two and one-half inches in height.

Source: Laws 1977, LB 38, § 302; Laws 2007, LB1, § 2.
Effective date September 1, 2007.

CHAPTER 29
CRIMINAL PROCEDURE

Article.

ARTICLE 2

POWERS AND DUTIES OF CERTAIN OFFICERS

Section.

29-216 Victim of sex offense; law enforcement officer, prosecuting officer, or government official; prohibited acts. (1) No law enforcement officer, prosecuting officer, or other government official shall ask or require an adult, youth, or child victim of a sex offense as defined under federal, tribal, state, territorial, or local law to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such offense.

(2) The refusal of a victim to submit to an examination as described in subsection (1) of this section shall not prevent the investigation of the offense.

Source: Laws 2007, LB143, § 1.
Effective date September 1, 2007.

ARTICLE 5

EXAMINATION BEFORE MAGISTRATE OR COURT

Section.

29-501 Repealed. Laws 2007, LB 214, § 5.

29-502 Repealed. Laws 2007, LB 214, § 5.

29-503 Repealed. Laws 2007, LB 214, § 5.

29-509 Docket; required; record of recognizances; transcript. It shall be the duty of every magistrate in criminal proceedings to keep a docket thereof as in civil cases. All recognizances taken under section 29-506 or 29-507, together with a transcript of the proceedings, where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of all the costs that have accrued, and the items composing the same.

Source: G.S.1873, c. 58, § 306, p. 794; R.S.1913, § 8960; C.S.1922, § 9984; C.S.1929, § 29-509; Laws 2007, LB214, § 3.
Effective date September 1, 2007.

ARTICLE 22

JUDGMENT ON CONVICTION

(c) PROBATION

Section.
29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized.

(c) PROBATION

29-2261 Presentence investigation, when; contents; psychiatric examination; persons having access to records; reports authorized. (1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b)(i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Nebraska Commission on Law Enforcement and Criminal Justice under the direction and supervision of the Chief Justice of the Supreme Court shall have access to presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

(9) Notwithstanding subsection (6) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential and nothing identifying any individual shall be released.

Source: Laws 1971, LB 680, § 16; Laws 1974, LB 723, § 1; Laws 1983, LB 78, § 4; Laws 2000, LB 1008, § 1; Laws 2002, LB 564, § 1; Laws 2002, Third Spec. Sess., LB 1, § 9; Laws 2003, LB 46, § 8; Laws 2004, LB 1207, § 17; Laws 2007, LB463, § 1129.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

ARTICLE 29

CONVICTED SEX OFFENDER

Section.

29-2928 Treatment in inpatient treatment program; determination; procedure; departments; duties. (1) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services is appropriate for a convicted sex offender, that the offender will enter the treatment program voluntarily, and that space is available in the program, the Director of Correctional Services shall transfer the offender to the treatment program designated by the Department of Health and Human Services for treatment. The Department of Correctional Services shall be responsible for physical transfer of the offender to the treatment facility.

(2) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services

is not appropriate for a convicted sex offender, the offender shall serve the sentence in a facility operated by the Department of Correctional Services and may participate in treatment offered by the Department of Correctional Services if the Department of Correctional Services determines that such treatment is appropriate for the offender. The Department of Correctional Services may make a recommendation concerning treatment as provided in subsection (4) of this section.

(3) If the Department of Health and Human Services determines that treatment in an inpatient treatment program operated by the Department of Health and Human Services is not initially appropriate for a convicted sex offender but may be appropriate at a later time, a treatment decision may be deferred until a designated time, no later than two and one-half years prior to the offender's earliest parole eligibility date, when the offender will be reevaluated.

(4) If the Department of Correctional Services determines that an offender participating in treatment offered by the Department of Correctional Services will benefit from a treatment program operated by the Department of Health and Human Services, the Department of Correctional Services shall notify the Department of Health and Human Services and recommend admission of the offender to the treatment program. The evaluation process to determine whether such offender is to be admitted into a treatment program operated by the Department of Health and Human Services pursuant to this subsection shall be based upon criteria and procedures established by the Department of Health and Human Services and shall not be subject to appeal or review.

Source: Laws 1992, LB 523, § 7; Laws 1996, LB 1044, § 82; Laws 2007, LB296, § 46. Operative date July 1, 2007.

29-2929 Inpatient treatment program; annual review and progress reports; uncooperative offender; transfer; credit for time in treatment. (1) The inpatient treatment program operated by the Department of Health and Human Services shall conduct annual reviews of each convicted sex offender in the program and submit annual progress reports to the Department of Correctional Services.

(2) If the offender is uncooperative while in the inpatient treatment program or is found not to be amenable to treatment, the Department of Health and Human Services shall cause the offender to be returned to the Department of Correctional Services in accordance with procedures established by the Department of Health and Human Services. The Department of Correctional Services shall be responsible for physical transfer of the offender from the inpatient treatment facility to the Department of Correctional Services. The Department of Health and Human Services shall, at the time of the transfer, provide the Department of Correctional Services a report summarizing the offender's response to and progress while in treatment and the reasons for the transfer and shall provide access to the treatment records as requested by the Department of Correctional Services.

(3) All days of confinement in a treatment program operated by the Department of Health and Human Services shall be credited to the offender's term of imprisonment.

Source: Laws 1992, LB 523, § 8; Laws 1996, LB 645, § 16; Laws 1996, LB 1044, § 83; Laws 2007, LB296, § 47.
Operative date July 1, 2007.

ARTICLE 35

CRIMINAL HISTORY INFORMATION

Section.

29-3523 Criminal history record information; notation of an arrest; dissemination; limitations; removal; expungement. (1) That part of criminal history record information consisting of a notation of an arrest, described in subsection (2) of this section, shall not be disseminated to persons other than criminal justice agencies after the expiration of the periods described in subsection (2) of this section except when the subject of the record:

(a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;

(b) Is currently an announced candidate for or holder of public office;

(c) Has made a notarized request for the release of such record to a specific person; or

(d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) Except as provided in subsection (1) of this section, the notation of arrest shall be removed from the public record as follows:

(a) In the case of an arrest for which no charges are filed as a result of the determination of the prosecuting attorney, the arrest shall not be part of the public record after one year from the date of arrest;

(b) In the case of an arrest for which charges are not filed as a result of a completed diversion, the arrest shall not be part of the public record after two years from the date of arrest; and

(c) In the case of an arrest for which charges are filed, but dismissed by the court on motion of the prosecuting attorney or as a result of a hearing not the subject of a pending appeal, the arrest shall not be part of the public record after three years from the date of arrest.

(3) Any person arrested due to the error of a law enforcement agency may file a petition with the district court for an order to expunge the criminal history record information related to such error. The petition shall be filed in the district court of the county in which the petitioner was arrested. The county attorney shall be named as the respondent and shall be served with a copy of the petition. The court may grant the petition and issue an order to expunge such

information if the petitioner shows by clear and convincing evidence that the arrest was due to error by the arresting law enforcement agency.

Source: Laws 1978, LB 713, § 25; Laws 1980, LB 782, § 1; Laws 1997, LB 856, § 1; Laws 2007, LB470, § 1. Effective date September 1, 2007.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section.
29-4013. Rules and regulations; release of information; duties; access to documents.

(a) SEX OFFENDER REGISTRATION ACT

29-4013 Rules and regulations; release of information; duties; 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 rules and regulations adopted by the Nebraska State Patrol shall identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(i) Conditions of release that minimize the risk of recidivism, including probation, parole, counseling, therapy, or treatment;

(ii) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(iii) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(A) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(B) Whether the sex offender committed the sexual offense against a child;

(C) Whether the sexual offense involved the use of a weapon, violence, or infliction of serious bodily injury;

(D) The number, date, and nature of prior offenses;

(E) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(F) The sex offender's response to treatment;

(G) Any recent threats by the sex offender against a person or expressions of intent to commit additional crimes; and

(H) Behavior of the sex offender while confined.

(c) The procedures for release of information established by the Nebraska State Patrol shall provide for three levels of notification by the law enforcement agency in whose jurisdiction

the sex offender is to be released depending on the risk of recidivism by the sex offender as follows:

(i) If the risk of recidivism is low, other law enforcement agencies shall be notified;

(ii) If the risk of recidivism is moderate, in addition to the notice required by subdivision (i) of this subdivision, schools, day care centers, health care facilities providing services to children or vulnerable adults, and religious and youth organizations shall be notified; and

(iii) If the risk of recidivism is high, in addition to the notice required by subdivisions (i) and (ii) of this subdivision, the public shall be notified through means designed to reach members of the public, which are limited to direct contact, news releases, a method utilizing a telephone system, or the Internet. The Nebraska State Patrol shall provide notice of sex offenders with a high risk of recidivism to at least one legal newspaper published in and of general circulation in the county where the offender is registered or, if none is published in the county, in a legal newspaper of general circulation in such county. 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.

(d) The Nebraska State Patrol shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification rules and regulations required by this section.

(e) The Nebraska State Patrol or a designee shall assign a notification level, based upon the risk of recidivism, to all persons required to register under the act.

(f) Personnel and mental health professionals 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 risk assessment and community notification pursuant to this section. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, or birth certificates. The division shall not be charged for access to documents under this subdivision. Access to such documents will ensure that a fair risk assessment is completed using the totality of all information available. For purposes of this subdivision, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (iii) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act.

(3) 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.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.

ARTICLE 41

DNA TESTING

(b) DNA TESTING ACT

Section.
29-4125. Biological material; secured; when.

(b) DNA TESTING ACT

29-4125 Biological material; secured; when. (1) Notwithstanding any other provision of law and subject to subsection (2) or (4) of this section, state agencies and political subdivisions shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

(2) State agencies or political subdivisions that have secured biological material for use in criminal cases may dispose of biological material before expiration of the period of time specified in subsection (1) of this section if:

(a) The state agency or political subdivision which secured the biological material for use in a criminal case notifies any person who remains incarcerated in connection with the case, such person's counsel of record, or if there is no counsel of record, the public defender, if applicable, in the county in which the judgment of conviction of such person was entered. The notice shall include:

(i) The intention of the state agency or political subdivision to dispose of the material after ninety days after receipt of the notice; and

(ii) The provisions of the DNA Testing Act;

(b) The person, such person's counsel of record, or the public defender does not file a motion under section 29-4120 within ninety days after receipt of notice under this section; and

(c) No other provision of law or court order requires that such biological material be preserved.

(3) The person, such person's counsel of record, or the public defender who receives notice under subdivision (2)(a) of this section, may, in lieu of a motion under section 29-4120, request in writing to take possession of the biological material for the purpose of having the material available for any future discovery of scientific or forensic techniques. Copies of any such written request shall be provided to both the court and to the county attorney. The costs of acquisition, preservation, and storage of any such material shall be at the expense of the person.

(4) The Department of Health and Human Services shall preserve biological material obtained for the purpose of determining the concentration of alcohol in a person's blood for two years unless a request is made for the retention of such material beyond such period in connection with a pending legal action.

Source: Laws 2001, LB 659, § 10; Laws 2003, LB 245, § 2; Laws 2007, LB296, § 48. Operative date July 1, 2007.

CHAPTER 30
DECEDENTS' ESTATES

Article.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

Part 8 - CREDITORS' CLAIMS

Section.

Part 8 - CREDITORS' CLAIMS

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.

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.
Operative date July 1, 2007.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

Part 1 - GENERAL PROVISIONS AND DEFINITIONS

Part 1 - GENERAL PROVISIONS AND DEFINITIONS

30-3805 (UTC 105) Default and mandatory rules. (UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified

beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22.
Operative date September 1, 2007.

Part 5 - CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

30-3846 (UTC 501) Rights of beneficiary's creditor or assignee. (UTC 501) To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Source: Laws 2003, LB 130, § 46; Laws 2007, LB124, § 23.
Operative date September 1, 2007.

30-3848 (UTC 503) Exceptions to spendthrift provision. (UTC 503) (a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

Source: Laws 2003, LB 130, § 48; Laws 2007, LB124, § 24.
Operative date September 1, 2007.

30-3849 (UTC 504) Discretionary trusts; effect of standard. (UTC 504) (a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

Source: Laws 2003, LB 130, § 49; Laws 2005, LB 533, § 42; Laws 2007, LB124, § 25.
Operative date September 1, 2007.

30-3851 (UTC 506) Mandatory distribution. (UTC 506) (a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard of distribution or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

Source: Laws 2003, LB 130, § 51; Laws 2007, LB124, § 26.
Operative date September 1, 2007.

Part 8 - DUTIES AND POWERS OF TRUSTEE

30-3867 (UTC 802) Duty of loyalty. (UTC 802) (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 30-38,101, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 30-3894;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30-3898; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e)(1) The following transactions shall not be presumed to be affected by a conflict between the personal and fiduciary interests of a trustee, if the transaction and any investment made pursuant to the transaction complies with the prudent investor rule set forth in sections 30-3883 to 30-3889 and is in the best interests of the beneficiaries:

(A) an investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee; or

(B) the placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(2) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or its associated entity may be reasonably compensated for any transaction or provision of services described in this subsection performed by the trustee, its affiliate, or its associated entity. However, with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment

management services, the trustee shall, at least annually, notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(g) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Source: Laws 2003, LB 130, § 67; Laws 2004, LB 999, § 28; Laws 2005, LB 533, § 44; Laws 2007, LB124, § 27.
Operative date March 20, 2007.

Part 11 - MISCELLANEOUS PROVISIONS

30-38,110 (UTC 1106) Application to existing relationships. (UTC 1106) (a) Except as otherwise provided in the Nebraska Uniform Trust Code, on January 1, 2005:

(1) the code applies to all trusts created before, on, or after January 1, 2005;

(2) the code applies to all judicial proceedings concerning trusts commenced on or after January 1, 2005;

(3) the code applies to judicial proceedings concerning trusts commenced before January 1, 2005, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the code does not apply and the superseded law applies; and

(4) an act done before January 1, 2005, is not affected by the code.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

(c) Any reference to the powers authorized under the Nebraska Trustees' Powers Act as such act existed prior to January 1, 2005, is deemed to be a reference to the powers authorized under the Nebraska Uniform Trust Code.

(d) Subsection (a) of section 30-3838, section 30-3839, section 30-3848, subsection (c) of section 30-3849, and subdivision (b)(1) of section 30-3879 apply only to trusts which become irrevocable on or after January 1, 2005.

Source: Laws 2003, LB 130, § 110; Laws 2004, LB 999, § 29; Laws 2007, LB124, § 28. Operative date September 1, 2007.

CHAPTER 31
DRAINAGE

Article.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-740 District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment. (1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regraveling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for

any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district

is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for sewage disposal, (c) the amount expended on water mains, (d) the gross amount of sewage processed in the district, (e) the cost per thousand gallons of processing sewage, (f) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (g) a detailed statement of all items of expense, (h) the number of employees, (i) the salaries and fees paid employees, (j) the total amount of taxes levied upon the property within the district, and (k) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city and collected and returned in the same manner as other municipal

special taxes or assessments are enforced and collected. When any such tax or assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the same as provided by law and return the same to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees shall have power, in connection with the issuance of any warrants or bonds of the district, to agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and shall also have power to agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; Laws 2002, LB 176, § 2; Laws 2007, LB296, § 50.
Operative date July 1, 2007.

CHAPTER 32
ELECTIONS

Article.

ARTICLE 2

ELECTION OFFICIALS

(c) COUNTIES WITH ELECTION COMMISSIONERS

Section.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-224 Repealed. Laws 2007, LB 646, § 17.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230 Receiving board; clerk of election; appointment; procedure; members; qualification; vacancy. (1) As provided in subsection (5) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board consisting of three judges of election and two clerks of election except as provided in subsection (3) of this section. The chairperson of the county central committee of each

political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) In precincts in which electronic voting systems are used, the receiving board shall have at least three members.

(4) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(5) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(6) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(7) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1.
Effective date September 1, 2007.

32-232 Election duties; who may perform; messenger; appointment; duties. (1) Any clerk of election may perform the duties of a judge of election, and any judge of election may perform the duties of a clerk of election. The county clerk may excuse two clerks of election from serving at any election, and the judges of election shall perform such duties without additional compensation.

(2) The county clerk shall designate one of the members of the receiving board as a messenger. The messenger shall receive from the county clerk the ballots and other equipment necessary for holding the election in the precinct for which he or she is a judge or clerk and shall deliver them to the polling place in his or her precinct at least one hour before the time provided by section 32-908 for opening the polls. The messenger shall return the ballots and other equipment to the county clerk as soon as possible after the votes are counted.

Source: Laws 1994, LB 76, § 52; Laws 1999, LB 802, § 3; Laws 2007, LB646, § 2.
Effective date September 1, 2007.

32-234 Repealed. Laws 2007, LB 646, § 17.

32-235 Election worker; notice of appointment. (1) The county clerk shall, by mail, notify judges and clerks of election, district inspectors, members of counting boards, and members of canvassing boards of their appointment. The notice shall inform the appointee of his or her appointment and of the date and time he or she is required to report to the office of the county clerk or other designated location and the polling place. The notice shall be mailed at least fifteen days prior to each statewide primary and general election. The county clerk shall order the members of the receiving board to appear at their respective polling place on the day and at the hour specified in the notice of appointment.

(2) Each appointee shall, at the time fixed in the notice of appointment, report to the office or other location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the county clerk.

Source: Laws 1994, LB 76, § 55; Laws 1997, LB 764, § 23; Laws 1999, LB 802, § 5; Laws 2002, LB 1054, § 14; Laws 2007, LB646, § 3.
Effective date September 1, 2007.

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. (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 food stamp 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.
Operative date July 1, 2007.

32-327 Death of registered voter; removal from registration records; Department of Health and Human Services; duty. The election commissioner or county clerk may at any time remove from the voter registration register a voter registration of a deceased person when the election commissioner or county clerk has any supporting information of the death of such voter. The Department of Health and Human Services shall provide, at cost, a record of the deaths of residents which occur in each county every three months to the appropriate election commissioner or county clerk.

Source: Laws 1994, LB 76, § 89; Laws 1997, LB 307, § 14; Laws 1999, LB 234, § 5; Laws 2007, LB296, § 52.
Operative date July 1, 2007.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section.

(a) OFFICES AND OFFICEHOLDERS

32-515 Educational service unit board; terms; qualifications; nonpartisan ballot. Candidates for the boards of educational service units, except boards of educational service units with only one member school district, shall be elected to represent the geographical boundaries of the educational service unit as provided in section 79-1217. The terms of members elected in 2008 to represent odd-numbered election districts established pursuant to section 79-1217.01 shall expire in 2011. The terms of members elected in 2008 to represent even-numbered election districts established under such section shall expire in 2013. Successors to the members elected in 2008 shall be elected for terms of four years. Candidates for the board of educational service units shall meet the qualifications found in section 79-1217. Board members shall be elected on the nonpartisan ballot.

Source: Laws 1994, LB 76, § 111; Laws 1996, LB 900, § 1039; Laws 1999, LB 802, § 11; Laws 2007, LB603, § 2.
Operative date September 1, 2007.

32-542 Class II school district; school board members; terms; qualifications. Three school board members shall be elected for each Class II school district at each statewide general election, except that when a Class II school district is created by a Class I school district which determines by a majority vote to establish a high school pursuant to section 79-406, a six-member board shall be elected at the next statewide general election and the three members receiving the highest number of votes shall be elected for terms of four years, and the three members receiving the next highest number of votes shall be elected for terms of two years. Each member's term of office shall begin on the date of the first regular meeting of the board in January following the statewide general election at which he or she is elected and, except as otherwise provided in this section, shall continue for four years or until the member's successor is elected and qualified. The term of a board member holding office on January 1, 1997, which term would otherwise expire before the first regular meeting of the board in January following the statewide general election, shall be extended to the first regular meeting of the board in January following the date his or her term would otherwise expire. The school board members of a Class II school district shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 138; Laws 1996, LB 900, § 1041; Laws 1996, LB 967, § 1; Laws 2005, LB 126, § 7; Referendum 2006, No. 422.

32-546.01 Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses. Each learning community shall be governed by a learning community coordinating council consisting of eighteen members, with twelve members elected on a nonpartisan ballot from six numbered election districts and with six members appointed from such election districts pursuant to this section. Each voter shall be allowed to cast votes for one candidate to represent the election district in which the voter resides. The two candidates receiving the most votes shall be elected. A candidate shall reside in the election district for which he or she is a candidate. No primary election for the office of learning community coordinating council shall be held.

The initial elected members shall be elected at the statewide general election immediately following the certification of the establishment of the learning community, and subsequent members shall be elected at subsequent statewide general elections. Except as provided in this section, such elections shall be conducted pursuant to the Election Act.

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 election district for the balance of the unexpired term.

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.

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 election 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 election 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 election district to be represented pursuant to a secret ballot, shall reside in the election district to be represented, and shall be appointed for two-year terms and until their successors are appointed and qualified.

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 election 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 election district to be represented to serve for the balance of the unexpired term.

Members of a learning community coordinating council shall take office on the first Thursday after the first Tuesday in January following their election. Each 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 as provided in sections 81-1174 to 81-1177.

Source: Laws 2007, LB641, § 49.
Effective date September 1, 2007.

32-551 Repealed. Laws 2007, LB 248, § 7.

(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. Such districts shall be compact and contiguous and substantially equal in population. The newly established election districts shall be certified to the Secretary of State on or before November 1 immediately following such certification. The newly established election districts shall apply beginning with the election of the first council members for such learning community. Following the drawing of initial election 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.
Effective date September 1, 2007.

(c) VACANCIES

32-567 Vacancies; offices listed; how filled. Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(5) In offices in public power and irrigation districts, according to section 70-615;

(6) In offices in natural resources districts, according to section 2-3215;

(7) In offices in community college areas, according to section 85-1514;

(8) In offices in educational service units, according to section 79-1217;

(9) In offices in hospital districts, according to section 23-3534;

(10) In offices in metropolitan utilities districts, according to section 14-2104;

(11) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(12) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(13) In membership on the council of a municipal county, by the council; and

(14) For learning community coordinating councils, according to section 32-546.01.

Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1.
Effective date September 1, 2007.

Cross Reference

Public Service Commission, vacancy, how filled, see section 75-103.
State Board of Education, vacancy, how filled, see section 79-314.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section.

32-604 Multiple office holding; when allowed. (1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsections (2) through (4) of this section, any person holding more than one high elective office upon September 13, 1997, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, learning community, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2. Effective date September 1, 2007.

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, a learning community coordinating council, 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.
Effective date September 1, 2007.

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 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.
Operative date September 1, 2007.

32-612 Change of political party affiliation; requirements for candidacy; prohibited acts. (1) A change of political party affiliation by a registered voter so as to affiliate with the political party named in the candidate filing form or in an affidavit as a write-in candidate pursuant to section 32-615 after the first Friday in December prior to the statewide primary election shall not be effective to meet the requirements of section 32-610 or 32-611 or subsection (4) of this section, except that any person may change his or her political party affiliation after the first Friday in December prior to the statewide primary election to become a candidate of a new political party which has successfully completed the petition process required by section 32-716.

(2) No registered voter, candidate, or proposed candidate shall swear falsely as to political party affiliation or shall swear that he or she affiliates with two or more political parties. Any candidate who swears falsely as to political party affiliation or swears that he or she affiliates with two or more political parties shall not be the candidate of such party and shall not be entitled to assume the office for which he or she filed even if he or she receives a majority or plurality of the votes therefor at the following general election.

(3) The name of a candidate shall not appear printed on more than one political party ballot. A candidate who is a registered voter of one political party shall not accept the nomination of another political party.

(4) In order to count write-in votes on a political party ballot in the primary election, the candidate who receives the votes must be a registered voter of that political party unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

Source: Laws 1994, LB 76, § 180; Laws 1997, LB 764, § 58; Laws 2007, LB646, § 4.
Effective date September 1, 2007.

32-618 Nomination by petition; number of signatures required. (1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand. If the district in which the petitions are circulated comprises two or more counties, at least twenty-five signatures shall be obtained in each county which has at least one hundred registered voters in the district;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand. If the regent district in which the petitions are circulated comprises more than two counties, at least twenty-five signatures shall be obtained in each of two-fifths of the counties comprising the district; and

(c) For board members of a Class III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least fifty signatures shall be obtained in each of one-third of the counties in the state; and

(b) For each partisan office to be filled by the registered voters of a county or political subdivision, at least twenty percent of the total vote for Governor or President of the United States at the immediately preceding general election within the county or political subdivision, not to exceed two thousand.

The number of signatures shall not be required to exceed one-fourth of the total number of registered voters voting for the office at the immediately preceding general election when the nomination is for a partisan office to be filled by the registered voters of a county.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1.
Effective date September 1, 2007.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section.

32-808 Ballots for early voting and applications; delivery; special ballot; publication of application form. (1) Ballots for early voting and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

(2) Notwithstanding subsection (1) of this section, upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election. The election commissioner or county clerk shall not forward any ballot for early voting if the election to which such ballot pertains has already been held. If the ballot has not been printed in sufficient time to meet the requirements of this subsection, the election commissioner or county clerk shall issue a special ballot at least sixty days prior to an election to each voter meeting the criteria of section 32-939 upon the written request by such voter requesting the special ballot. A complete list of the nominated candidates and issues to be voted upon by a voter meeting the criteria of such section shall be included with the special ballot by the election commissioner or county clerk. A notice shall be sent with the primary election ballot stating that the voter must request a general election ballot unless such voter has requested both the primary and general election ballots. If the voter has requested both ballots, a notice shall be sent with the primary election ballot stating that the general election ballot will be sent to the same address unless otherwise notified.

(3) For purposes of this section, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue.

(4) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Source: Laws 1994, LB 76, § 229; Laws 1996, LB 964, § 4; Laws 1997, LB 764, § 74; Laws 1999, LB 571, § 3; Laws 2005, LB 98, § 8; Laws 2007, LB646, § 5.
Effective date September 1, 2007.

Cross Reference

Absentee ballots for school bond elections, see section 10-703.01.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section.

32-904 Polling places; designation; changes; notification required. The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons. When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards. Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6.
Effective date September 1, 2007.

32-906 Polling place; supplies and equipment; designation outside precinct; standards. (1) The election commissioner or county clerk shall provide each polling place with ballot boxes, ballot box locks and keys, and a sufficient number of voting booths furnished with supplies and conveniences to enable each registered voter to prepare his or her ballot for voting and to secretly mark his or her ballot. One voting booth shall be provided for approximately every one hundred registered voters in the precinct. The election commissioner or county clerk may increase or decrease the number of voting booths to accommodate the expected voter turnout of any election other than a statewide election.

(2) When there is no structure within the precinct suitable for use as a polling place, the election commissioner or county clerk may designate a polling place outside the precinct and convenient thereto which shall be provided with voting booths furnished with supplies and conveniences as are other polling places.

(3) Standards for polling places shall include any applicable standards developed under sections 81-5,147 and 81-5,148.

Source: Laws 1994, LB 76, § 249; Laws 2003, LB 358, § 19; Laws 2007, LB646, § 7.
Effective date September 1, 2007.

32-909 Ballot box; inspection and use; election officials; duties. Before any ballot is deposited in the ballot box, the ballot box shall be publicly opened and exhibited and the judges and clerks of election shall see that no ballot is in the box. The ballot box shall then be locked and the key delivered to one of the judges of election or, in counties having an election commissioner, to the precinct inspector. A ballot box which contains ballots that will be counted using a scanner may be opened prior to the hour established by law for the closing of the polls at the discretion of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 252; Laws 2003, LB 358, § 20; Laws 2005, LB 566, § 33; Laws 2007, LB646, § 8.
Effective date September 1, 2007.

32-913 Precinct list of registered voters; sign-in register; preparation and use. (1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document at the discretion of the election commissioner or county clerk. If a combined document is used, a clerk of election may list the names of the registered voters in a separate book in the order in which they voted.

(2) Within twenty-four hours after the polls close in the precinct, the precinct inspector or one of the judges of election shall deliver the precinct list of registered voters and the precinct sign-in register to the election commissioner or county clerk. The election commissioner or county clerk shall file and preserve the list and register. No member of a receiving board who has custody or charge of the precinct list of registered voters and the precinct sign-in register shall permit the list or register to leave his or her possession from the time of receipt until he or she delivers them to another member of the receiving board or to the precinct inspector or judge of election for delivery to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 256; Laws 1997, LB 764, § 83; Laws 2003, LB 358, § 21; Laws 2007, LB44, § 1.
Effective date September 1, 2007.

32-914 Ballots; distribution procedure. (1) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is

registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936.

(2) Except as otherwise specifically provided, no ballot shall be handed to any voter at any election until:

(a) He or she announces his or her name and address to the clerk of election;

(b) The clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01;

(c) The voter has presented a photographic identification which is current and valid at the time of the election, or a copy of a utility bill, bank statement, paycheck, government check, or other government document which is current at the time of the election and which shows the same name and residence address of the voter that is on the precinct list of registered voters, if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county and a notation appears on the precinct list of registered voters that the voter has not previously presented identification to the election commissioner or county clerk;

(d) As instructed by the clerk of election, the registered voter has personally written his or her name (i) in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter or (ii) in the combined document containing the precinct list of registered voters and the sign-in register; and

(e) The clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter or has listed the name of the voter in a separate book as provided in section 32-913.

Source: Laws 1994, LB 76, § 257; Laws 1997, LB 764, § 84; Laws 2002, LB 1054, § 19; Laws 2003, LB 358, § 22; Laws 2003, LB 359, § 4; Laws 2005, LB 566, § 34; Laws 2007, LB44, § 2. Effective date September 1, 2007.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section.

32-1001 Closing of polls; receiving board; duties. After the polls have closed, the precinct list of registered voters and the precinct sign-in register shall be signed by all members of the receiving board, the names of the registered voters shall be counted, and the number shall be recorded where designated on the list and the register. If a line is missed or a name is voided, the receiving board shall subtract such omissions or voids from the total before recording the total on the list and the register. The receiving board shall certify to all matters pertaining to casting of ballots and shall turn over the ballots, ballot boxes, list of registered voters, and sign-in register to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 295; Laws 2007, LB646, § 9.
Effective date September 1, 2007.

32-1002 Provisional ballots; when counted. (1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(7) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(8) The verification and investigation shall be completed within seven days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10.
Effective date September 1, 2007.

32-1004 Overvote; rejection; when. If a ballot has been overvoted for any office, the ballot shall be rejected for that office only. No overvoted ballot shall be judged for voter intent by any member of the counting board or any official involved in the counting process.

Source: Laws 1994, LB 76, § 298; Laws 2007, LB646, § 11.
Effective date September 1, 2007.

32-1010 Ballots; where counted. Ballots shall be counted or compiled at a centralized location as provided in sections 32-1012 to 32-1018. The receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12.
Effective date September 1, 2007.

32-1011 Repealed. Laws 2007, LB 646, § 17.

32-1019 Repealed. Laws 2007, LB 646, § 17.

32-1020 Repealed. Laws 2007, LB 646, § 17.

32-1021 Repealed. Laws 2007, LB 646, § 17.

32-1022 Repealed. Laws 2007, LB 646, § 17.

32-1023 Repealed. Laws 2007, LB 646, § 17.

32-1024 Repealed. Laws 2007, LB 646, § 17.

32-1025 Repealed. Laws 2007, LB 646, § 17.

32-1026 Repealed. Laws 2007, LB 646, § 17.

Note: This section was amended by Laws 2007, LB 44, section 3, and repealed by Laws 2007, LB 646, section 17. The repeal became effective on September 1, 2007, and the section has been deleted.

32-1027 Counting board for early voting; appointment; duties. (1) The election commissioner or county clerk shall appoint two or more registered voters to the counting board for early voting. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The counting board may begin

carrying out its duties not earlier than the second Monday before the election and shall meet as directed by the election commissioner or county clerk.

(2) The counting board shall place all identification envelopes in order and shall review each returned identification envelope pursuant to verification procedures prescribed in subsections (3) and (4) of this section.

(3) In its review, the counting board shall determine if:

(a) The voter has provided his or her name, residence address, and signature on the voter identification envelope;

(b) The ballot has been received from the voter who requested it and the residence address is the same address provided on the voter's request for a ballot for early voting, by comparing the information provided on the identification envelope with information recorded in the record of early voters or the voter's request;

(c) A completed and signed registration application has been received from the voter by the deadline in section 32-302, 32-321, or 32-325 or by the close of the polls pursuant to section 32-945;

(d) An identification document has been received from the voter not later than the close of the polls on election day if required pursuant to section 32-318.01; and

(e) A completed and signed registration application and oath has been received from the voter by the close of the polls on election day if required pursuant to section 32-946.

(4) On the basis of its review, the counting board shall determine whether the ballot shall be counted or rejected as follows:

(a) A ballot received from a voter who was properly registered on or prior to the deadline for registration pursuant to section 32-302 or 32-321 shall be accepted for counting without further review if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot for early voting has been issued or sent;

(ii) The residence address provided on the identification envelope is the same residence address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(iii) The identification envelope has been signed by the voter;

(b) In the case of a ballot received from a voter who was not properly registered prior to the deadline for registration pursuant to section 32-302 or 32-321, the ballot shall be accepted for counting if:

(i) A valid registration application completed and signed by the voter has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(ii) The name on the identification envelope appears to be that of the person who requested the ballot;

(iii) The residence address provided on the identification envelope and on the registration application is the same as the residence address as provided on the voter's request for a ballot for early voting; and

(iv) The identification envelope has been signed by the voter;

(c) In the case of a ballot received from a voter without a residence address who requested a ballot pursuant to section 32-946, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been sent;

(ii) A valid registration application completed and signed by the voter, for whom the residence address is deemed to be the address of the office of the election commissioner or county clerk pursuant to section 32-946, has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(iii) The oath required pursuant to section 32-946 has been completed and signed by the voter and received by the election commissioner or county clerk by the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter; and

(d) In the case of a ballot received from a registered voter required to present identification before voting pursuant to section 32-318.01, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(ii) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any;

(iii) A copy of an identification document authorized in section 32-318.01 has been received by the election commissioner or county clerk prior to the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter.

(5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved.

(6) The counting board may, on the second Monday before the election, open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting as directed by the election commissioner or county clerk. At the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election.

(7) If an identification envelope is rejected, the counting board shall not open the identification envelope. The counting board shall write Rejected on the identification envelope and the reason for the rejection. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be reinserted in the identification envelope which shall be resealed and marked Rejected, no official signature. The counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Ballots and seal it.

(8) As soon as all ballots have been placed in the sealed container and rejected identification envelopes or ballots have been sealed in the Rejected Ballots container, the counting board shall count the ballots the same as all other ballots and an unofficial count shall be reported to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Source: Laws 1994, LB 76, § 321; Laws 1999, LB 802, § 18; Laws 2002, LB 935, § 16; Laws 2005, LB 98, § 26; Laws 2005, LB 566, § 54; Laws 2007, LB646, § 13.
Effective date September 1, 2007.

32-1041 Voting and counting methods and locations authorized; approval required; when. The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners. Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14.
Effective date September 1, 2007.

32-1049 Vote counting device; requirements. Any election commissioner or county clerk using a vote counting device to count ballots in a centralized location shall:

(1) Provide for the proper sealing of the containers and the security of the ballots when transported from each polling place to the centralized location and when removed from their containers and delivered to the personnel who operate the vote counting devices;

(2) Provide a process of counting which allows for the ballots of each precinct to be placed in a sealed container and placed in a secure location after the counting process has been completed;

(3) Provide for a method of overseeing the ballots that have been overvoted or damaged which does not involve judging voter intent to assure that these ballots have not been or will not be intentionally mismarked;

(4) Provide for a procedure for counting write-in votes when such votes and names of write-in candidates are to be counted and recorded;

(5) Provide for at least three independent tests to be conducted before counting begins to verify the accuracy of the counting process, which includes the computerized program installed for counting various ballots by vote counting devices, by (a) the election commissioner or county clerk, (b) the chief deputy election commissioner or a registered voter with a different party affiliation than that of the election commissioner or county clerk, and (c) the person who installed the program in the vote counting device or the person in charge of operating the device;

(6) Provide for storing and safeguarding the magnetic tapes or computer chips of the vote counting devices for the required period of time;

(7) Provide the appropriate security personnel or measures necessary to safeguard the secrecy and security of the counting process;

(8) Develop a procedure for picking up and counting ballots during election day at the discretion of the election commissioner or county clerk. No report or tabulation of vote totals for such ballots shall be produced or generated prior to one hour before the closing of the polls; and

(9) Submit a written plan to the Secretary of State specifically outlining the procedures that will be followed on election day to implement this section. The plan shall be submitted no later than twenty-five days before the election and shall be modified, as necessary, for each primary, general, or special election.

Source: Laws 1994, LB 76, § 343; Laws 2007, LB646, § 15.
Effective date September 1, 2007.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties. (1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed petition to the election commissioner or county clerk by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. Upon receipt of the pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name and number or voting precinct, and city, village, or post office

address with the voter registration records to determine whether the signer was a registered voter. The determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient. The express purpose of the comparison of names and addresses with the voter registration records, in addition to helping to determine the validity of such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process.

(2) Upon completion of the determination of registration, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer found not to be a registered voter and the petition page number and line number where the name is found, and if the reason for the invalidity of the signature or address is other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reason for the invalidity of the signature. If the election commissioner or county clerk determines that a signer has affixed his or her signature more than once to any page or pages of the petition and that only one person is registered by that name, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name of the duplicate signature and shall count only the earliest dated signature. The election commissioner or county clerk shall deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical and technical errors in a petition shall be disregarded if the forms prescribed in sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1. Effective date September 1, 2007.

CHAPTER 33
FEES AND SALARIES

Article.
1. Fees and Salaries. 33-106.03, 33-107.02.

ARTICLE 1

FEES AND SALARIES

Section.
33-106.03. Dissolution of marriage; additional docket fee.
33-107.02. Modification of certain marriage, child support, or child custody or parenting time orders; additional docket fee.

33-106.03 Dissolution of marriage; additional docket fee. In addition to the fees provided for in sections 33-106 and 33-123, the clerk of the court shall collect an additional seventy-five dollars in docket fees for dissolution of marriages. The fee shall be remitted to the State Treasurer who shall credit twenty-five dollars to the Nebraska Child Abuse Prevention Fund and fifty dollars to the Parenting Act Fund.

Source: Laws 1986, LB 333, § 7; Laws 1996, LB 1296, § 6; Laws 2002, Second Spec. Sess., LB 48, § 1; Laws 2007, LB554, § 26.
Operative date January 1, 2008.

33-107.02 Modification of certain marriage, child support, or child custody or parenting time orders; additional docket fee. (1) A docket fee of sixty-five dollars shall be collected by the clerk of the county court or the clerk of the district court for each proceeding to modify a decree of dissolution or annulment of marriage, a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month. Fifteen dollars shall be credited to the Legal Aid and Services Fund, and fifty dollars shall be credited to the Parenting Act Fund.

(2) Any proceeding filed by a county attorney or an authorized attorney, as defined in section 43-1704, in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, shall not be subject to the provisions of this section.

Source: Laws 1997, LB 729, § 2; Laws 1999, LB 19, § 1; Laws 2007, LB554, § 27.
Operative date January 1, 2008.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

Article.
1. Division Fences. 34-101 to 34-113.

ARTICLE 1

DIVISION FENCES

Section.

34-101 Repealed. Laws 2007, LB 108, § 10.

34-102 Division fence; adjoining landowners; apportionment of cost. (1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them, except that if the adjoining landowners each cause or allow the use of the division fence to confine livestock upon their respective properties, each landowner shall construct and maintain the division fence between them in equal shares. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a lawful fence, as defined in section 34-115.

(3) The duty assigned to adjoining landowners by this section applies (a) when either or both of the adjoining lands lie within an area zoned for agricultural or horticultural purposes as defined in section 77-1359 and either or both of the adjoining lands are utilized as agricultural

or horticultural land and (b) in all other areas of the state when both of the adjoining lands are utilized as agricultural or horticultural land.

Source: R.S.1866, c. 1, § 13, p. 8; R.S.1913, § 476; Laws 1919, c. 94, § 2, p. 237; C.S.1922, § 2418; C.S.1929, § 34-102; Laws 2007, LB108, § 3.
Effective date March 8, 2007.

Cross Reference

Game and Parks Commission, division fence responsibilities, see section 37-1012.

34-103 Repealed. Laws 2007, LB 108, § 10.

34-104 Repealed. Laws 2007, LB 108, § 10.

34-105 Repealed. Laws 2007, LB 108, § 10.

34-106 Repealed. Laws 2007, LB 108, § 10.

34-107 Repealed. Laws 2007, LB 108, § 10.

34-108 Repealed. Laws 2007, LB 108, § 10.

34-109 Repealed. Laws 2007, LB 108, § 10.

34-110 Repealed. Laws 2007, LB 108, § 10.

34-111 Repealed. Laws 2007, LB 108, § 10.

34-112 Division fence; injury or destruction; repair. Whenever a division fence is injured or destroyed by fire, floods, or other casualty, the person bound to construct and maintain such fence, or any part thereof, shall make repairs to the same, or his or her just proportion thereof, as provided in section 34-102.

Source: R.S.1866, c. 1, § 23, p. 9; R.S.1913, § 2486; C.S.1922, § 2426; C.S.1929, § 34-110; Laws 2007, LB108, § 4.
Effective date March 8, 2007.

34-112.01 Division fence; entry upon land authorized. An owner of land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair the division fence. This section does not authorize any alterations to adjacent land owned by another person, including the removal of trees, buildings, or other obstacles, without the consent of the adjacent landowner or a court order or the removal of any items of personal property lying thereon without the consent of the adjacent landowner or a court order.

Source: Laws 2007, LB108, § 5.
Effective date March 8, 2007.

34-112.02 Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs. (1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence or complete construction of a division fence, or commence or complete maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until seven days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation

and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source: Laws 2007, LB108, § 6.
Effective date March 8, 2007.

34-112.03 Division fence; changes made by Laws 2007, LB 108; applicability. The changes made to sections 34-102, 34-112, and 37-1012 by Laws 2007, LB 108, sections 34-112.01 and 34-112.02, and the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by Laws 2007, LB 108, apply commencing on March 8, 2007, except that prior law applies to any division fence dispute commenced prior to such date.

Source: Laws 2007, LB108, § 7.
Effective date March 8, 2007.

34-113 Repealed. Laws 2007, LB 108, § 10.

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.
5. Rural and Suburban Fire Protection Districts. 35-509.
8. Clothing and Equipment. 35-801.

ARTICLE 5

RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section.
35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties. (1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. After the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county board on or before August 1 of each year. Such board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district when the district is a rural or suburban fire protection district, for the maintenance of the fire protection district for the fiscal year as provided by law, plus such levy as is authorized to be made under subdivision (13) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (2) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(2) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(3) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S.1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5.
Operative date July 1, 2007.

ARTICLE 8

CLOTHING AND EQUIPMENT

Section.
35-801. Clothing and equipment; prohibited acts; violation; penalty.

35-801 Clothing and equipment; prohibited acts; violation; penalty. (1) No vendor or manufacturer shall knowingly transfer, sell, or offer for sale in this state to any fire department or firefighter any item of clothing or equipment designed and intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such transfer, sale, or offer for sale.

(2) No fire department shall knowingly purchase and no fire department or firefighter shall knowingly accept from any vendor or manufacturer any item of clothing or equipment intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such purchase or acceptance.

(3) Any person violating subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

(4) For purposes of this section:

(a) Clothing or equipment shall not include station or work uniforms or other items of personal clothing worn or intended to be worn under protective clothing or equipment while fighting fires; and

(b) Fire department means any paid or volunteer fire department, company, association, or organization or first-aid, rescue, or emergency squad serving a city, village, county, township, or rural or suburban fire protection district or any other public or private fire department.

Source: Laws 1992, LB 27, § 1; Laws 1993, LB 67, § 1; Laws 2007, LB160, § 2.
Effective date September 1, 2007.

CHAPTER 37
GAME AND PARKS

Article.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section.

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.
Effective date September 1, 2007.

ARTICLE 4

PERMITS AND LICENSES

(a) GENERAL PERMITS

Section.

(a) GENERAL PERMITS

37-406 Licenses, permits, and stamps; issuance; fees; violation; penalty. (1) Licenses, permits, and stamps required under the Game Law shall be issued by the commission and may be procured from the secretary of the commission. The commission may provide for the electronic issuance of any license, permit, or stamp required under the Game Law and may enter into contracts to procure necessary services and supplies for the electronic issuance of licenses, permits, and stamps. Except for permits issued under sections 37-462 and 37-463, the commission may provide for the issuance of any license, permit, or stamp required under the Game Law in the form of a number which identifies the holder in the records of the commission. The commission may designate itself and other persons, firms, and corporations as agents to issue licenses, permits, and stamps and collect the prescribed fees. The commission and any person, firm, or corporation authorized by the commission to issue licenses, permits, and stamps shall be entitled to collect and retain an additional fee of not less than fifty cents and not more than two dollars, for each license, permit, or stamp issued as reimbursement for the clerical work of issuing the license, permit, or stamp and collecting and remitting the fees.

(2) The commission shall adopt and promulgate rules and regulations regarding electronic issuance of licenses, permits, and stamps, including electronic issuance devices, deposits by agents, and remittance of fees. The commission may provide for the electronic issuance of a license, permit, or stamp by acknowledging the purchase of such license, permit, or stamp without requiring a physical license, permit, or stamp or facsimile of such.

(3) It shall be unlawful for any person to duplicate any electronically issued license, permit, or stamp. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least seventy-five dollars, and any license, permit, or stamp involved in such violation shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 3, p. 409; C.S.1929, § 37-203; R.S.1943, § 37-203; Laws 1963, c. 202, § 1, p. 652; Laws 1983, LB 162, § 1; Laws 1993, LB 235, § 5; R.S.1943, (1993), § 37-203; Laws 1998, LB 922, § 116; Laws 1999, LB 176, § 19; Laws 2002, LB 1003, § 18; Laws 2003, LB 305, § 6; Laws 2007, LB299, § 1.
Effective date September 1, 2007.

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, and (f) not more than forty-nine dollars and fifty cents for an annual fishing permit.

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.
Effective date September 1, 2007.

37-414 Bow hunter education program; certificate; issuance; required; when. (1) The commission shall establish and administer a bow hunter education program consisting of 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 safe use of bow hunting equipment, the fundamentals of bow hunting, shooting and hunting techniques, game identification, conservation management, and hunter ethics. When establishing such a program, the commission shall train volunteers as bow

hunter education training instructors. The commission shall issue a certificate of successful completion to any person who satisfactorily completes a bow hunter education program established by the commission and shall print, purchase, or otherwise acquire materials necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such program.

(2) A person born on or after January 1, 1977, who is hunting antelope, deer, elk, or mountain sheep with a bow and arrow pursuant to any provision of sections 37-447 to 37-453 shall have on his or her person a bow hunter education certificate of successful completion issued by his or her state or province of residence or a bow hunter education certificate issued by an accredited program recognized by the commission.

Source: Laws 1991, LB 403, § 1; Laws 1996, LB 584, § 2; Laws 1997, LB 107, § 1; R.S.Supp.,1997, § 37-105; Laws 1998, LB 922, § 124; Laws 2001, LB 111, § 4; Laws 2003, LB 305, § 10; Laws 2007, LB299, § 3.
Effective date September 1, 2007.

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 less than one dollar and fifty cents and 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 less than one dollar and fifty cents and 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 less than seventy-five dollars and not more than one hundred twenty-five 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 not be less than one dollar and fifty cents and 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 not less than thirteen dollars and not more than sixteen dollars per stamp. An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of not less than five dollars and not more than seven dollars and fifty cents per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits and a fee of not less than seventy-five dollars and not more than one 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 less than five dollars and not more than ten 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.
Effective date September 1, 2007.

37-427 Stamps; nontransferable; expiration. The habitat stamp, aquatic habitat stamp, or Nebraska migratory waterfowl stamp required by section 37-426 is not transferable and, except for the lifetime habitat stamp, the lifetime aquatic habitat stamp, the lifetime Nebraska migratory waterfowl stamp, and a habitat stamp purchased for a permit which is valid into the next calendar year, expires at midnight on December 31 in the year for which the stamp is issued.

Source: Laws 1976, LB 861, § 8; Laws 1983, LB 174, § 2; Laws 1996, LB 584, § 10; R.S.Supp.,1996, § 37-216.02; Laws 1998, LB 922, § 137; Laws 1999, LB 176, § 28; Laws 2001, LB 111, § 7; Laws 2003, LB 305, § 12; Laws 2005, LB 162, § 9; Laws 2007, LB299, § 5.
Effective date September 1, 2007.

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. No expenditure shall be made from the Nebraska Habitat Fund 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 shall be credited to the Nebraska 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.

(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. No expenditure shall be made from the Nebraska Aquatic Habitat Fund 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.
Effective date September 1, 2007.

Cross Reference

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

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; regulation and limitation by commission; issuance; fee. (1) The commission may issue permits for the hunting of deer and prescribe and establish 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 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) 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 that the fee for a statewide buck-only permit shall be two and one-half times the amount of a regular deer permit.

(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.

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.
Effective date September 1, 2007.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees. The commission may issue permits for hunting antelope and may establish separate and, when necessary, different 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. 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. 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.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8.
Effective date September 1, 2007.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee. The commission may issue permits for hunting elk and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. Permits to hunt elk issued pursuant to this section shall not be issued to nonresidents. The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than eight dollars and fifty cents and a fee of not more than one hundred forty-nine dollars and fifty cents for each elk permit issued. 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. 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.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9.
Effective date September 1, 2007.

37-452 Permit to hunt deer, antelope, elk, or mountain sheep; age requirements. No person shall be issued a permit to hunt deer, antelope, elk, or mountain sheep unless such person is at least twelve years of age, except that any person who is twelve through fifteen years of age shall only hunt deer, antelope, elk, or mountain sheep when accompanied by a person twenty-one years of age or over having a valid hunting permit.

Source: Laws 1998, LB 922, § 162; Laws 1999, LB 176, § 43; Laws 2005, LB 162, § 17; Laws 2007, LB299, § 10.
Effective date September 1, 2007.

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.

(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.

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.
Effective date September 1, 2007.

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. 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.
Effective date September 1, 2007.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(b) GAME AND BIRDS

Section.

(b) GAME AND BIRDS

37-513 Shooting at wildlife from highway or roadway; trapping in county road right-of-way; violation; penalty. (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 fifty dollars.

(2)(a) It shall be unlawful to trap any wildlife in the county road right-of-way.

(b) 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.
Effective date September 1, 2007.

37-527 Hunter orange display required; exception; violation; penalty. (1) For purposes of this section, hunter orange means a daylight fluorescent orange color with a dominant wave length between five hundred ninety-five and six hundred five nanometers, an excitation purity of not less than eighty-five percent, and a luminance factor of not less than forty percent.

(2) Any person hunting deer, antelope, wild turkey, elk, or mountain sheep during an authorized firearm season in this state shall display on his or her head, chest, and back a total of not less than four hundred square inches of hunter orange material except as exempted by rules and regulations of the commission.

(3) Any person who violates this section shall be guilty of a Class V misdemeanor.

(4) This section shall not apply to archery hunters hunting during a non-center-fire firearm season or in a management unit where a current center-fire firearm season is not open. The commission may adopt and promulgate rules and regulations allowing additional exceptions.

Source: Laws 1972, LB 1216, § 1; R.S.1943, (1993), § 37-215.05; Laws 1998, LB 922, § 247; Laws 1999, LB 176, § 72; Laws 2007, LB299, § 14.
Effective date September 1, 2007.

(d) FISH AND AQUATIC ORGANISMS

37-548 Wildlife; prohibited acts; violation; penalty; release, importation, commercial exploitation, and exportation permits; fees; commission; powers and duties. (1) It shall be unlawful for any person to import into the state or release to the wild any live wildlife including the viable gametes, eggs or sperm, except those which are approved by rules and regulations of the commission or as otherwise provided in the Game Law. It shall be unlawful to commercially exploit or export from the state any dead or live wildlife taken from the wild except those which are exempted by rules and regulations of the commission. Any person violating this subsection shall be guilty of a Class III misdemeanor.

(2) The commission shall adopt and promulgate rules and regulations to carry out subsection (1) of this section. In adopting such rules and regulations, the commission shall be governed by the Administrative Procedure Act. Such rules and regulations shall include a listing of (a) the wildlife which may be released or imported into the state and (b) the wildlife taken from the wild which may be commercially exploited or exported from the state. The rules and regulations for release, importation, commercial exploitation, and exportation of species other than commercial fish and bait fish shall include, but not be limited to, requirements for

annual permits for release or importation or for commercial exploitation or exportation, permit fees, the number of individual animals of a particular species that may be released, imported, collected, or exported under a permit, and the manner and location of release or collection of a particular species. The rules and regulations may be amended, modified, or repealed from time to time, based upon investigation and the best available scientific, commercial, or other reliable data.

(3) The commission shall establish permit fees as required by subsection (2) of this section to cover the cost of permit processing and enforcement of the permits and research into and management of the ecological effects of release, importation, commercial exploitation, and exportation. The commission shall remit the fees to the State Treasurer for credit to the Wildlife Conservation Fund.

(4) The commission may determine that the release, importation, commercial exploitation, or exportation of wildlife causes economic or ecologic harm by utilizing the best available scientific, commercial, and other reliable data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(5) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence as to whether such additional species will or will not cause ecologic or economic harm, conduct a review of any listed or unlisted species proposed to be removed from or added to the list published pursuant to subdivision (2)(a) of this section. The review shall be conducted pursuant to subsection (4) of this section.

(6) The commission shall, upon its own recommendation or upon the petition of any person who presents to the commission substantial evidence that commercial exploitation or exportation will cause ecologic or economic harm or significant impact to a wildlife population, conduct a review of any listed or unlisted species proposed to be added to or removed from the list published pursuant to subdivision (2)(b) of this section. The review shall be conducted pursuant to subsection (4) of this section.

Source: Laws 1993, LB 830, § 11; R.S.1943, (1993), § 37-536; Laws 1998, LB 922, § 268; Laws 1999, LB 176, § 79; Laws 2007, LB299, § 15.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

(g) HUNT THROUGH THE INTERNET

37-571 Hunt through the Internet, defined. For purposes of sections 37-571 to 37-573, hunt through the Internet means to hunt living wildlife in real time using Internet services to remotely control actual firearms and to remotely discharge live ammunition.

Source: Laws 2007, LB504, § 2.
Effective date September 1, 2007.

37-572 Hunt through the Internet; prohibited acts; confiscation and forfeiture of contraband. (1) No person shall hunt through the Internet.

(2) No person shall host hunting through the Internet or otherwise enable another person to hunt through the Internet.

(3) Any conservation officer or any person specifically employed or designated by the United States Fish and Wildlife Service may offer to host or otherwise enable another person to hunt through the Internet for the sole purpose of obtaining evidence of a violation of this section.

(4) Any firearm, computer, equipment, appliance, or conveyance used in violation of this section is contraband and shall be confiscated and forfeited to the state upon seizure by law enforcement authorities.

Source: Laws 2007, LB504, § 3.
Effective date September 1, 2007.

37-573 Violations; penalty. (1) Any person who violates subsection (1) of section 37-572 is guilty of a Class II misdemeanor, shall pay a fine of not less than two hundred fifty dollars for a first offense and not less than five hundred dollars for each subsequent offense, and shall not hunt, fish, or trap in this state for a period of not less than one year from the date of sentencing.

(2) Any person who violates subsection (2) of section 37-572 is guilty of a Class II misdemeanor and shall pay a fine of not less than two hundred fifty dollars for a first offense and not less than five hundred dollars for each subsequent offense. Each unlawful transaction, offer, or transfer of wildlife for any consideration, or possession of contraband described in section 37-572 with the intent to transact, offer, or transfer wildlife for any consideration in connection with hunting through the Internet is a separate offense. Any person who violates subsection (2) of section 37-572 shall not hunt, fish, or trap for a period of not less than one year from the date of sentencing.

Source: Laws 2007, LB504, § 4.
Effective date September 1, 2007.

ARTICLE 6

ENFORCEMENT

Section.
37-614. Revocation and suspension of permits; grounds.

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;

(c) Trapping wildlife in the county right-of-way in violation of section 37-513; and

(d) 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.
Effective date September 1, 2007.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

Section.

37-803 Legislative intent. The Legislature finds and declares:

(1) That it is the policy of this state to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems;

(2) That species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within this state shall be accorded such protection as is necessary to maintain and enhance their numbers;

(3) That this state shall assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the Endangered Species Act by prohibiting the taking, possession, transportation, exportation from this state, processing, sale or offer for sale, or shipment within this state of such endangered species and by carefully regulating such activities with regard to such threatened species. Exceptions to such prohibitions, for the purpose of enhancing the conservation of such species, may be permitted as set forth in the Nongame and Endangered Species Conservation Act; and

(4) That any funding for the conservation of nongame, threatened, and endangered species shall be made available to the commission from General Fund appropriations, the Wildlife Conservation Fund, or other sources of revenue not deposited in the State Game Fund.

Source: Laws 1975, LB 145, § 3; Laws 1984, LB 466, § 4; R.S.1943, (1993), § 37-432; Laws 1998, LB 922, § 353; Laws 2007, LB299, § 17.
Effective date September 1, 2007.

37-811 Wildlife Conservation Fund; created; use; investment. There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. Money shall be transferred into such fund from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Money remaining in the Nongame and Endangered Species Conservation Fund on September 1, 2007, shall be transferred to the Wildlife Conservation Fund on such date.

Source: Laws 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18.
Effective date September 1, 2007.

Cross Reference

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

ARTICLE 10

RECREATIONAL TRAILS

Section.
37-1012. Responsibility for fences.

37-1012 Responsibility for fences. (1) The Game and Parks Commission shall have the same responsibility with regard to division fences as a private landowner as provided in sections 34-102 to 34-117, except that in those areas where a state recreational trail is developed, the commission shall have the same responsibility as a railroad as provided in sections 74-601 to 74-604, but the type of fence required under section 74-601 shall not be required for those areas where a state recreational trail is developed. All fences shall be constructed and maintained as required under this subsection unless such construction and maintenance is waived in writing by affected adjoining landowners. The commission shall be responsible for the construction and replacement cost of any fence agreed to by the commission and adjoining landowner. The commission shall also be responsible for providing supplies for the maintenance of any fence along a state recreational trail or for the reimbursement to the adjoining landowner for the cost of supplies for the maintenance of any fence along a state recreational trail. The adjoining landowner shall be responsible for the maintenance of the fence. In such areas the type of fence may be (a) wire fence of at least four barbed wires, of a size not less than twelve and one-half gauge fencing wire, to be secured to posts, the posts to be at no greater distance than one rod from each other, or (b) a fence of any type that is agreed to by the commission and adjoining landowners. All fences constructed under either subdivision (a) or (b) of this subsection shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivision (1)(c) of section 28-521.

(2) The responsibility of the commission for fences along a state recreational trail shall not exceed the amount appropriated to the commission by the Legislature for such purpose during any biennium, except that the commission may use any funds specifically gifted or obtained by grant application to the commission the sole purpose of which is to provide fencing for a state recreational trail.

(3) The commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 739, § 4; R.S.1943, (1996), § 81-815.61; Laws 1998, LB 922, § 387; Laws 2000, LB 701, § 3; Laws 2007, LB108, § 8.
Effective date March 8, 2007.

ARTICLE 12

STATE BOAT ACT

Section.

37-1254.05 Boating under influence of alcohol or controlled substance; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee. Except as provided in section 37-1254.03, any test made pursuant to section 37-1254.02, if made in conformance with the requirements of this section, shall be competent evidence in any prosecution under a state law or city or village ordinance regarding the actual physical control of any motorboat under propulsion upon the waters of this state while under the influence of alcohol or regarding the actual physical control of any motorboat under propulsion upon the waters of this state when the concentration of alcohol in the blood or breath is in excess of allowable levels in violation of section 37-1254.01 or a city or village ordinance. To be considered valid, tests shall have been performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by the department for such purpose. The department may approve satisfactory techniques or methods and ascertain the qualifications and competence of individuals to perform such tests and may issue permits which shall be subject to termination or revocation at the discretion of the department.

The permit fee may be established by rules and regulations adopted and promulgated by the department, which fee shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund as a laboratory service fee.

Source: Laws 1989, LB 195, § 7; Laws 1996, LB 1044, § 95; Laws 2001, LB 773, § 10; Laws 2007, LB296, § 53.
Operative date July 1, 2007.

37-1254.06 Boating under influence of alcohol or controlled substance; blood test; withdrawing requirements; damages; liability. (1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 37-1254.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in

performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 37-1254.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1989, LB 195, § 8; Laws 1997, LB 210, § 1; Laws 2000, LB 819, § 67; Laws 2000, LB 1115, § 3; Laws 2007, LB296, § 54.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

Article.

ARTICLE 1

UNIFORM CREDENTIALING ACT

Section.

38-101 Act, how cited. Sections 38-101 to 38-1,139 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 Aid Instrument Dispensers and Fitters 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 579, § 15; Laws 1986, LB 926, § 1; Laws 1986, LB 355, § 8; Laws 1987, LB 473, § 3; Laws 1988, LB 1100, § 4; Laws 1988, LB 557, § 12; Laws 1989, LB 344, § 4; Laws 1989, LB 323, § 2; 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.

Note: The changes made by LB 481 became effective May 17, 2007. The changes made by LB 247, section 23, became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247, section 58, and LB 463 became operative December 1, 2008.

Cross Reference

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 Aid Instrument Dispensers and Fitters 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.

38-102 Legislative findings. The Legislature recognizes the need for regulation of persons and businesses providing health and health-related services and environmental services. It is the intent of the Legislature to provide for such regulation through the Uniform Credentialing Act.

Source: Laws 2007, LB463, § 2.
Operative date December 1, 2008.

38-103 Purposes of act. The purposes of the Uniform Credentialing Act are (1) to protect the public health, safety, and welfare by (a) providing for the credentialing of persons and businesses that provide health and health-related services and environmental services which are made subject to the act and (b) the development, establishment, and enforcement of standards for such services and (2) to provide for the efficient, adequate, and safe practice of such persons and businesses.

Source: Laws 2007, LB463, § 3.
Operative date December 1, 2008.

38-104 Existing rules, regulations, licenses, certificates, and legal and administrative proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall continue to be effective under the Uniform Credentialing Act to the extent not in conflict with the act.

(2) All licenses, certificates, registrations, permits, seals, practice agreements, or other forms of approval issued prior to December 1, 2008, in accordance with the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall remain valid as issued for purposes of the Uniform Credentialing Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Uniform Licensing Law or other statutes amended or repealed by Laws 2007, LB 463, shall be subject to the provisions of the Uniform Licensing Law or such other statutes as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 4.
Operative date December 1, 2008.

38-105 Definitions, where found. For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120 apply.

Source: Laws 2007, LB463, § 5.
Operative date December 1, 2008.

38-106 Active addiction, defined. Active addiction means current physical or psychological dependence on alcohol or a substance, which dependence develops following the use of alcohol or a substance on a periodic or continuing basis.

Source: Laws 2007, LB463, § 6.
Operative date December 1, 2008.

38-107 Alcohol or substance abuse, defined. Alcohol or substance abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment

or distress as manifested by one or more of the following occurring at any time during the same twelve-month period:

(1) Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) Recurrent alcohol or substance use in situations in which it is physically hazardous;

(3) Recurrent legal problems related to alcohol or substance use; or

(4) Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

Source: Laws 2007, LB463, § 7.
Operative date December 1, 2008.

38-108 Board, defined; no board established by statute; effect. Board means one of the boards appointed by the State Board of Health pursuant to section 38-158 or appointed by the Governor pursuant to the Emergency Medical Services Practice Act or the Water Well Standards and Contractors' Practice Act. For professions for which there is no board established by statute, the duties normally carried out by a board are the responsibility of the department.

Source: Laws 2007, LB463, § 8.
Operative date December 1, 2008.

Cross Reference

Emergency Medical Services Practice Act, see section 38-1201.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-109 Business, defined. Business means a person engaged in providing services listed in subsection (3) of section 38-121.

Source: Laws 2007, LB463, § 9.
Operative date December 1, 2008.

38-110 Certificate, defined. Certificate means an authorization issued by the department that gives a person the right to use a protected title that only a person who has met specific requirements may use.

Source: Laws 2007, LB463, § 10.
Operative date December 1, 2008.

38-111 Consumer, defined. Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Source: Laws 2007, LB463, § 11.
Operative date December 1, 2008.

38-112 Course of study, defined. Course of study means a program of instruction necessary to obtain a credential meeting the requirements set out for each profession in the

appropriate practice act and rules and regulations and includes a college, a professional school, a vocational school, hours of training, or a program of instruction with a similar designation.

Source: Laws 2007, LB463, § 12.
Operative date December 1, 2008.

38-113 Credential, defined. Credential means a license, certificate, or registration.

Source: Laws 2007, LB463, § 13.
Operative date December 1, 2008.

38-114 Department, defined. Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2007, LB463, § 14.
Operative date December 1, 2008.

38-115 Dependence, defined. Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same twelve-month period:

(1) Tolerance as defined by either of the following:

(a) A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or

(b) A markedly diminished effect with continued use of the same amount of alcohol or the substance;

(2) Withdrawal as manifested by either of the following:

(a) The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders -- Fourth Edition, published by the American Psychiatric Association; or

(b) Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;

(3) Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;

(4) A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;

(5) A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance, or to recover from the effects of use of alcohol or the substance;

(6) Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or

(7) Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Source: Laws 2007, LB463, § 15.
Operative date December 1, 2008.

38-116 Director, defined. Director means the Director of Public Health of the Division of Public Health or his or her designee.

Source: Laws 2007, LB463, § 16.
Operative date December 1, 2008.

38-117 Inactive credential, defined. Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent himself or herself as having an active credential.

Source: Laws 2007, LB463, § 17.
Operative date December 1, 2008.

38-118 License, defined. License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

Source: Laws 2007, LB463, § 18.
Operative date December 1, 2008.

38-119 Profession, defined. Profession means any profession or occupation named in subsection (1) or (2) of section 38-121.

Source: Laws 2007, LB463, § 19.
Operative date December 1, 2008.

38-120 Registry, defined. Registry means a list of persons who offer a specified service or activity.

Source: Laws 2007, LB463, § 20.
Operative date December 1, 2008.

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 aid 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 579, § 16; Laws 1986, LB 355, § 9; Laws 1988, LB 1100, § 5; Laws 1988, LB 557, § 13; 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.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

38-122 Credential; form. Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department and signed by the director, the Governor, and the officers of the appropriate board, if any.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 299, with LB 463, section 22, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-123 Record of credentials issued under act; department; duties; contents. (1) The department shall establish and maintain a record of all credentials issued pursuant to the Uniform Credentialing Act. The record shall contain identifying information for each credential holder and the credential issued pursuant to the act.

(2) For individual credential holders engaged in a profession:

(a) The record information shall include:

(i) The name, date and place of birth, and social security number;

(ii) The street, rural route, or post office address;

(iii) The school and date of graduation;

(iv) The name of examination, date of examination, and ratings or grades received, if any;

(v) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(vi) The status of the credential; and

(vii) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record, except that social security numbers shall not be public information but may be shared as specified in subsection (5) of section 38-130.

(3) For credential holders engaged in a business:

(a) The record information shall include:

(i) The full name and address of the business;

(ii) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(iii) The status of the credential; and

(iv) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record.

(4) If the department is required to provide notice or notify an applicant or credential holder under the Uniform Credentialing Act, such requirements shall be satisfied by mailing a written notice to such applicant or credential holder at his or her last address of record.

Source: Laws 2007, LB463, § 23.
Operative date December 1, 2008.

38-124 Credential; availability; identity of profession or business. Every person credentialed under the Uniform Credentialing Act shall make the person's current credential available upon request. The department, with the recommendation of the appropriate board, if any, shall determine how a consumer will be able to identify a credential holder. The method of identification shall be clear and easily accessed and used by the consumer.

All signs, announcements, stationery, and advertisements of persons credentialed under the act shall identify the profession or business for which the credential is held.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp.,1941, § 71-206; Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 1100, § 6; Laws 1988, LB 557, § 14; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws 2004, LB 1083, § 105; R.S.Supp.,2006, § 71-107; Laws 2007, LB236, § 3; Laws 2007, LB463, § 24.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 3, with LB 463, section 24, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-125 Certification and verification of credentials. (1) Upon request and payment of the required fee, the department shall provide certification of a credential which shall include a certified statement that provides information regarding the basis on which a credential was issued, the date of issuance, and whether disciplinary action has been taken against the credential.

(2) Upon request and payment of the required fee, the department shall provide verification of a credential which shall include written confirmation as to whether a credential is valid at the time the request is made.

Source: Laws 1927, c. 167, § 44, p. 465; C.S.1929, § 71-506; R.S.1943, § 71-145; Laws 1986, LB 286, § 44; Laws 1986, LB 579, § 36; Laws 1994, LB 1210, § 24; Laws 1996, LB 1044, § 381; Laws 2003, LB 242, § 19; R.S.1943, (2003), § 71-145; Laws 2007, LB463, § 25.
Operative date December 1, 2008.

38-126 Rules and regulations; board and department; adopt. To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

(i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination;

(ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

(iii) Set continuing competency requirements in conformance with section 38-145;

(iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;

(v) Set standards for courses of study; and

(vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and

(b) The department shall promulgate and enforce such rules and regulations;

(2) For professions or businesses that do not have a board created by statute:

(a) The department may adopt, promulgate, and enforce such rules and regulations; and

(b) The department shall carry out any statutory powers and duties of the board;

(3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and

(4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 321, with LB 463, section 26, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-127 Statutes, rules, and regulations; availability; duty of department. The department shall have available for each profession and business regulated under the Uniform Credentialing Act the applicable statutes, rules, and regulations relative to the credentials for the appropriate profession or business.

Source: Laws 1927, c. 167, § 69, p. 472; C.S.1929, § 71-903; R.S.1943, § 71-170; Laws 1986, LB 286, § 75; Laws 1986, LB 579, § 67; Laws 1994, LB 1210, § 51; Laws 1996, LB 1044, § 402; Laws 1999, LB 828, § 57; R.S.1943, (2003), § 71-170; Laws 2007, LB463, § 27.
Operative date December 1, 2008.

38-128 Legislative intent; department review of credentialed professions and businesses. (1) It is the intent of the Legislature that quality health care services and human services be provided to the public and basic standards be developed to protect the public health and safety and that professions be regulated by the state only when it is demonstrated that such regulation is in the best interests of the public.

(2) The department shall periodically review each credentialed profession and business to determine if continued credentialing is needed to protect the public.

Source: Laws 1999, LB 828, § 8; R.S.1943, (2003), § 71-1,343; Laws 2007, LB463, § 28.
Operative date December 1, 2008.

38-129 Issuance of credential; qualifications. No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation. A credential may only be issued to a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant whose visa for entry, or application for visa for entry, is related to such employment in the United States.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29.
Operative date December 1, 2008.

38-130 Credential; application; contents. (1) An individual shall file an application for a credential to practice a profession with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

(a) The legal name of the applicant;

(b) The date and place of birth of the applicant;

(c) The address of the applicant;

(d) The social security number of the applicant or the resident identification number of the applicant if the applicant is not a citizen of the United States and is otherwise eligible to be credentialed under section 38-129; and

(e) Any other information required by the department.

(2) A business shall file an application for a credential with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

(a) The full name and address of the business;

(b) The full name and address of the owner of the business;

(c) The name of each person in control of the business;

(d) The social security number of the business if the applicant is a sole proprietorship; and

(e) Any other information required by the department.

(3) The applicant shall sign the application. If the applicant is a business, the application shall be signed by:

(a) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;

(b) Two of its members if the applicant is a limited liability company that has more than one member;

(c) Two of its officers if the applicant is a corporation;

(d) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or

(e) If the applicant is not an entity described in subdivisions (a) through (d) of this subsection, the owner or owners or, if there is no owner, the chief executive officer or comparable official.

(4) Each credential holder under the Uniform Credentialing Act shall notify the department of any change to the address of record so that the department can update the record of the credential holder under section 38-123.

(5) Social security numbers obtained under this section shall not be public information but may be shared by the department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

Source: Laws 1927, c. 167, § 8, p. 456; C.S.1929, § 71-207; R.S.1943, § 71-108; Laws 1979, LB 427, § 1; Laws 1986, LB 286, § 29; Laws 1986, LB 579, § 21; Laws 1986, LB 926, § 3; Laws 1987, LB 473, § 4; Laws 1991, LB 456, § 5; Laws 1994, LB 1210, § 15; Laws 1997, LB 752, § 156; Laws 1999, LB 828, § 11; R.S.1943, (2003), § 71-108; Laws 2007, LB463, § 30.
Operative date December 1, 2008.

38-131 Criminal background check; when required. (1) An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122 or to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036.

(3) An applicant for a temporary educational permit as defined in section 38-2019 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2.

Note: The changes made by LB 481 became effective May 17, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

38-132 Examinations; application; fees. Any person desiring to take an examination for credentialing purposes shall make application to the department or to the organization specified by the department prior to examination on a form provided by the department or such organization. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules and regulations of the department or such organization. When a national or standardized examination is required, the department may direct the applicant to apply directly to the organization administering the examination to take the examination.

Source: Laws 1927, c. 167, § 25, p. 460; C.S.1929, § 71-401; R.S.1943, § 71-125; Laws 1979, LB 427, § 14; Laws 1986, LB 286, § 36; Laws 1986, LB 579, § 28; Laws 1986, LB 926, § 13; Laws 1987, LB 473, § 13; Laws 1990, LB 1064, § 2; Laws 1991, LB 703, § 13; R.S.1943, (2003), § 71-125; Laws 2007, LB463, § 32.
Operative date December 1, 2008.

38-133 Approved courses of study; approval required. The department shall maintain a list of approved courses of study for the professions which are regulated by the Uniform Credentialing Act. The appropriate board shall make recommendations relative thereto and shall approve the list for its profession. The department shall approve the list for a profession if there is no appropriate board. No course of study shall be approved without the formal action of the department or the appropriate board. Any course of study whose graduates or students desire to take the Nebraska examination shall supply the department with the necessary data to allow the board and the department to determine whether that course of study should be approved.

Source: Laws 1927, c. 167, § 28, p. 461; C.S.1929, § 71-404; R.S.1943, § 71-128; Laws 1979, LB 427, § 15; Laws 1986, LB 286, § 37; Laws 1986, LB 579, § 29; Laws 1990, LB 1064, § 3; Laws 1999, LB 828, § 31; R.S.1943, (2003), § 71-128; Laws 2007, LB463, § 33.
Operative date December 1, 2008.

38-134 Examinations; oral or practical; approval of national or other examination. (1) The oral or practical work portion of any examination for a credential under the Uniform Credentialing Act may be given by the members of the appropriate board, the department, or an organization approved by the appropriate board or the department if there is no board. The oral examination questions shall be limited to the practice of the profession.

(2) The appropriate board may approve any national or other examination to constitute part or all of the credentialing examination for any of the professions which are regulated by the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 33, p. 462; C.S.1929, § 71-409; R.S.1943, § 71-133; Laws 1979, LB 427, § 18; Laws 1982, LB 449, § 1; Laws 1982, LB 450, § 1; Laws 1982, LB 448, § 1; Laws 1984, LB 470, § 4; Laws 1984, LB 481, § 15; Laws 1986, LB 286, § 39; Laws 1986, LB 579, § 31; Laws 1988, LB 1100, § 14; Laws 1989, LB 489, § 1; Laws 1990, LB 1064, § 6; Laws 1999, LB 828, § 35; Laws 2001, LB 209, § 2; R.S.1943, (2003), § 71-133; Laws 2007, LB463, § 34.
Operative date December 1, 2008.

38-135 Examinations; time and place. Examinations for credentialing shall be held on such dates and at such times and places as set by the department or the organization approved by the appropriate board or the department. Special examinations may be given at the expense of the applicant and administered by the department or the organization specified by the department.

Source: Laws 1927, c. 167, § 29, p. 461; C.S.1929, § 71-405; R.S.1943, § 71-129; Laws 1984, LB 470, § 3; Laws 1986, LB 926, § 14; Laws 1990, LB 1064, § 4; Laws 1996, LB 1108, § 7; Laws 1999, LB 828, § 32; R.S.1943, (2003), § 71-129; Laws 2007, LB463, § 35.
Operative date December 1, 2008.

38-136 Examinations; passing score; reexaminations. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The appropriate board may specify the passing score on credentialing examinations;

(b) An examinee who fails a credentialing examination may retake the entire examination or the part failed upon payment of the cost of retaking the examination; and

(c) The department shall withhold from the credentialing fee submitted by an examinee the cost of any national examination used when an examinee fails a credentialing examination and shall return to the examinee the remainder of the credentialing fee collected subject to section 38-156, except that:

(i) If a state-administered jurisprudence portion of the credentialing examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for retaking such examination.

(2) A person who desires to take an examination but does not wish to receive a credential may take such examination by meeting the examination eligibility requirements and paying the cost of the examination.

Source: Laws 1927, c. 167, § 31, p. 462; C.S.1929, § 71-407; Laws 1939, c. 91, § 4, p. 394; C.S.Supp.,1941, § 71-407; R.S.1943, § 71-131; Laws 1969, c. 560, § 3, p. 2279; Laws 1979, LB 427, § 16; Laws 1983, LB 476, § 4; Laws 1984, LB 481, § 14; Laws 1985, LB 250, § 1; Laws 1986, LB 277, § 7; Laws 1986, LB 286, § 38; Laws 1986, LB 579, § 30; Laws 1986, LB 926, § 16; Laws 1986, LB 355, § 13; Laws 1988, LB 1100, § 13; Laws 1988, LB 557, § 19; Laws 1989, LB 342, § 10; Laws 1990, LB 1064, § 5; Laws 1991, LB 703, § 14; Laws 1993, LB 669, § 10; Laws 1994, LB 1210, § 21; Laws 1995, LB 406, § 17; Laws 1999, LB 828, § 33; Laws 2002, LB 1021, § 8; Laws 2002, LB 1062, § 12; Laws 2003, LB 242, § 18; Laws 2004, LB 1083, § 111; R.S.Supp.,2006, § 71-131; Laws 2007, LB481, § 3; Laws 2007, LB463, § 36.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 463, section 36, with LB 481, section 3, to reflect all amendments.
Note: The changes made by LB 481 became effective May 17, 2007. The changes made by LB 463 became operative December 1, 2008.

38-137 Examinations; records maintained; eligibility. (1) All questions, the answer key, and the examinees' answers connected with any examination for credentialing shall be maintained by the department, national organization, or testing service for a period of two years from the date of administration of the examination.

(2) When national examinations are accepted for credentialing, the department shall obtain from the national organization or testing service documentation that the examination development and maintenance process meets generally accepted standards for test development and maintenance.

(3) The department, with the recommendation of the appropriate board, may:

(a) Specify credentialing examination application procedures;

(b) Provide for the review of procedures for the development of examinations;

(c) Provide for the administration of all or separate components of examinations; and

(d) Protect the security of the content of examination questions and answers.

(4) The appropriate board may specify eligibility for taking the credentialing examination. In determining such eligibility, the board shall consider the practices of other states but shall determine such eligibility standards based on the extent to which completion of a course of study prior to examination is necessary to assure that applicants for credentials meet minimum standards of proficiency and competency for the protection of the health and safety of the public.

Source: Laws 1927, c. 167, § 38, p. 463; C.S.1929, § 71-414; R.S.1943, § 71-138; Laws 1969, c. 560, § 4, p. 2280; Laws 1978, LB 406, § 10; Laws 1979, LB 427, § 29; Laws 1986, LB 286, § 42; Laws 1986, LB 579, § 34; Laws 1986, LB 926, § 22; Laws 1987, LB 473, § 14; Laws 1990, LB 1064, § 7; Laws 1991, LB 703, § 16; Laws 1999, LB 828, § 36; R.S.1943, (2003), § 71-138; Laws 2007, LB463, § 37.
Operative date December 1, 2008.

38-138 Inspection of business by department. The department may inspect or provide for the inspection of any business credentialed or applying for a credential under the Uniform Credentialing Act. The department shall issue an inspection report and provide a copy of the report to the business within ten working days after the completion of an inspection.

Source: Laws 2007, LB463, § 38.
Operative date December 1, 2008.

38-139 Inspection of business by State Fire Marshal or local fire prevention personnel. The department may request the State Fire Marshal to inspect any business credentialed or applying for a credential under the Uniform Credentialing Act for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such business. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2007, LB463, § 39.
Operative date December 1, 2008.

38-140 Report of unauthorized practice or unauthorized operation of business; investigation; cease and desist order; violation; penalty. Every business credentialed under the Uniform Credentialing Act shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with other law enforcement agencies, investigate such reports or other complaints of unauthorized practice or unauthorized operation of a business. The appropriate board may issue an order to cease and desist the unauthorized practice of such profession or unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person or business prior to referral of the matter to the Attorney General for action. For businesses that do not have a board, the department may issue such cease and desist orders. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

Source: Laws 2007, LB463, § 40.
Operative date December 1, 2008.

38-141 Inspector or investigator; appointment by department. Whenever the department deems it necessary to appoint an inspector or investigator to assist it in performing its duty, the department may appoint a person who holds an active credential in the appropriate profession or any other qualified person who has been trained in investigational procedures and techniques to serve as such inspector or investigator.

Source: Laws 1953, c. 247, § 3, p. 850; Laws 1979, LB 427, § 13; Laws 1996, LB 1108, § 6; Laws 1999, LB 828, § 30; R.S.1943, (2003), § 71-124.01; Laws 2007, LB463, § 41.
Operative date December 1, 2008.

38-142 Credential; expiration date; renewal; reinstatement; inactive status. (1) The credential to practice a profession shall be renewed biennially upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 38-145 and 38-146. The renewals provided for in this section shall be accomplished in such

manner and on such date as the department, with the recommendation of the appropriate board, may establish.

The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that persons actively engaged in the military service of the United States, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as the act existed on January 1, 2007, shall not be required to pay the renewal fee.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed person at his or her last address of record. If a credentialed person fails to notify the department of his or her desire to have his or her credential placed on inactive status upon its expiration, fails to meet the requirements for renewal on or before the date of expiration of his or her credential, or otherwise fails to renew his or her credential, it shall expire. When a person's credential expires, the right to represent himself or herself as a credentialed person and to practice the profession in which a credential is required shall terminate. Any credentialed person who fails to renew the credential by the expiration date and desires to resume practice of the profession shall apply to the department for reinstatement of the credential.

(3) When a person credentialed pursuant to the Uniform Credentialing Act desires to have his or her credential placed on inactive status, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession, but he or she may represent himself or herself as having an inactive credential. A credential may remain on inactive status for an indefinite period of time.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S.1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004, LB 1083, § 106; R.S.Supp.,2006, § 71-110; Laws 2007, LB236, § 4; Laws 2007, LB463, § 42.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 4, with LB 463, section 42, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-143 Credential to engage in business; renewal; procedure; notice of expiration. (1) The credential to engage in a business shall be renewed biennially upon request of the credentialed business and completion of the renewal requirements. The renewals provided for in this section shall be accomplished in such manner and on such date

as the department, with the recommendation of the appropriate board, may establish. The request for renewal shall include all information required by the department and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed business at its last address of record. If a credentialed business fails to meet the renewal requirements on or before the date of expiration of the credential, the credential shall expire. When a credential expires, the right to operate the business shall terminate. A business which fails to renew its credential by the expiration date shall apply for and obtain another credential prior to operating the business.

Source: Laws 2003, LB 242, § 15; Laws 2004, LB 906, § 1; Laws 2004, LB 1005, § 9; R.S.Supp.,2006, § 71-110.01; Laws 2007, LB463, § 43.
Operative date December 1, 2008.

38-144 Credential; failure to pay fees; failure to meet continuing competency requirement; effect. (1) The credential of any person who fails, by the expiration date of such credential, to pay the required renewal fee or to submit documentation of continuing competency shall automatically expire without further notice or hearing.

(2) The department shall refuse to renew after notice and opportunity for hearing, the credential of any person who fails, by the expiration date of such credential, to meet the applicable continuing competency requirement for renewal.

(3) Subsections (1) and (2) of this section shall not apply when the credential holder has given notification to the department that he or she desires to have his or her credential expire or be placed on inactive status upon expiration.

Source: Laws 1927, c. 167, § 48, p. 467; C.S.1929, § 71-603; Laws 1943, c. 150, § 12, p. 543; R.S.1943, § 71-149; Laws 1976, LB 877, § 2; Laws 1984, LB 481, § 19; Laws 1986, LB 286, § 47; Laws 1986, LB 579, § 39; Laws 1987, LB 473, § 17; Laws 1988, LB 1100, § 18; Laws 1994, LB 1210, § 28; Laws 2002, LB 1021, § 10; Laws 2003, LB 242, § 20; R.S.1943, (2003), § 71-149; Laws 2007, LB463, § 44.
Operative date December 1, 2008.

38-145 Continuing competency requirements; board; duties. (1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

(a) Continuing education;

(b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;

(c) Board certification in a clinical specialty area;

(d) Professional certification;

(e) Self-assessment;

(f) Peer review or evaluation;

(g) Professional portfolio;

(h) Practical demonstration;

(i) Audit;

(j) Exit interviews with consumers;

(k) Outcome documentation;

(l) Testing;

(m) Refresher courses;

(n) Inservice training;

(o) Practice requirement; or

(p) Any other similar modalities.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45. Operative date December 1, 2008.

38-146 Continuing competency requirements; compliance; waiver; audits. (1) Each person holding an active credential within the state shall, on or before the date of expiration of his or her credential, comply with continuing competency requirements for his or her profession. Except as otherwise provided in this section, the department shall not renew the credential of any person who has not complied with such requirements.

(2) The department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his or her control have prevented completion of such requirements. Such circumstances shall include, but not be limited to:

(a) The credential holder has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date;

(b) The credential holder was first credentialed within the credentialing period immediately preceding the renewal date; or

(c) Other circumstances prescribed by rules and regulations adopted and promulgated under the appropriate practice act.

(3) Each credential holder shall be responsible for maintaining certificates or records of continuing competency activities.

The department or appropriate board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit shall be required to produce documentation of the continuing competency activities. The credential of any person who fails to comply with the conditions of the audit shall expire thirty days after notice and an opportunity for a hearing.

Source: Laws 1976, LB 877, § 15; Laws 1985, LB 250, § 5; Laws 1986, LB 286, § 63; Laws 1986, LB 579, § 55; Laws 1986, LB 926, § 34; Laws 1994, LB 1210, § 42; Laws 1997, LB 307, § 120; Laws 1999, LB 828, § 48; Laws 2001, LB 209, § 3; Laws 2002, LB 1021, § 13; R.S.1943, (2003), § 71-161.10; Laws 2007, LB463, § 46.
Operative date December 1, 2008.

38-147 Credential; reinstatement; application; department; powers. (1) Any person who desires to reinstate a credential after the date of expiration or from inactive to active status shall apply to the department for reinstatement. The credential may be reinstated upon the receipt of evidence of meeting the renewal requirements, or the requirements specified under the practice act for the appropriate profession, which are in effect at the time the credential holder applies to regain active status and payment of reinstatement and renewal fees if applicable.

(2) The department, with the recommendation of the appropriate board, may deny an application for reinstatement or may issue the credential subject to any of the terms of section 38-196 if the applicant has committed any of the acts set out in section 38-178.

(3) A credential holder who elected to have his or her credential placed on lapsed status prior to December 1, 2008, may have the credential reinstated in accordance with this section.

Source: Laws 2007, LB463, § 47.
Operative date December 1, 2008.

38-148 Credential; suspended, revoked, or other limitations; apply for reinstatement; when. (1) A person whose credential has been suspended or has had limitations placed thereon for any reason specified in sections 38-178 and 38-179 may apply for reinstatement of the credential at any time. The application shall include such information as may be required by the department.

(2) A person whose credential has been revoked for any reason specified in such sections may apply for reinstatement of the credential after a period of two years has elapsed from the date of revocation. The application shall include such information as may be required by the department.

Source: Laws 1976, LB 877, § 9; Laws 1986, LB 286, § 57; Laws 1986, LB 579, § 49; Laws 1986, LB 926, § 32; Laws 1988, LB 1100, § 23; Laws 1994, LB 1210, § 37; Laws 1999, LB 828, § 45; R.S.1943, (2003), § 71-161.04; Laws 2007, LB463, § 48.
Operative date December 1, 2008.

38-149 Application for reinstatement of credential for profession with board; when considered and acted upon; hearing; when allowed; procedure; appeal. (1) Upon receipt of an application under section 38-148 for reinstatement of a credential in a profession that has a board, the application shall be sent to the board for consideration. Any application for reinstatement, accompanied by the required information and documentation, shall be acted upon by the board within one hundred eighty days after the filing of the completed application.

(2) The department, with the recommendation of the appropriate board, may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination at the expense of the applicant by one or more physicians or other qualified professionals appointed by the board, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department and the appropriate board;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations at the expense of the applicant;

(d) Require the applicant to successfully complete additional education at the expense of the applicant;

(e) Require the applicant to successfully pass an inspection of his or her practice site; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the board shall (a) deny the application for reinstatement or (b) recommend to the department (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the board shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing before the board, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing before the board. The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

(5)(a) The department may only consider applications for reinstatement with an affirmative recommendation of the appropriate board. If the board recommends (i) full reinstatement of the credential, (ii) modification of the suspension or limitation, or (iii) reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the board's recommendation shall be sent to the applicant by certified mail and forwarded to the director for a decision.

(b) The director shall receive (i) the written recommendation of the board, including any finding of fact or order of the board, (ii) the application for reinstatement, (iii) the record of hearing if any, and (iv) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the applicant.

(c) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (i) in excess of statutory authority, (ii) made upon unlawful procedure, (iii) unsupported by competent, material, and substantial evidence in view of the entire record, or (iv) arbitrary or capricious.

(6) The director's decision may be appealed by any party to the decision. The appeal shall be in accordance with the Administrative Procedure Act.

(7) Denial by a board of an application for reinstatement may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 11; Laws 1986, LB 286, § 59; Laws 1986, LB 579, § 51; Laws 1990, LB 1064, § 8; Laws 1994, LB 1210, § 39; Laws 1996, LB 1044, § 390; R.S.1943, (2003), § 71-161.06; Laws 2007, LB296, § 312; Laws 2007, LB463, § 49.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 312, with LB 463, section 49, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-150 Application for reinstatement of credential for profession without board; department; procedure; hearing; when allowed; appeal. (1) Upon receipt of an application for reinstatement of a credential in a profession that does not have a board, the application shall be considered by the department.

(2) The department may:

(a) Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by section 38-178;

(b) Require the applicant to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the department, the applicant being free also to consult a physician or physicians or other professionals of his or her own choice for an evaluation or diagnostic examination and to make available a report or reports thereof to the department;

(c) Require the applicant to pass a written, oral, or practical examination or any combination of such examinations;

(d) Require the applicant to successfully complete additional education;

(e) Require the applicant, if a business, to successfully complete an inspection; or

(f) Take any combination of the actions in this subsection.

(3) On the basis of material submitted by the applicant, the results of any inspection or investigation by the department, and the completion of any requirements imposed under subsection (2) of this section, the department shall (a) deny the application for reinstatement, (b) grant the application for reinstatement, (c) modify the probation, suspension, or limitation, or (d) reinstate the credential subject to limitations or subject to probation with terms and conditions.

(4) The decision of the department shall become final thirty days after mailing the decision to the applicant unless the applicant requests a hearing within such thirty-day period. If the applicant requests a hearing, the department shall mail notice of the date, time, and location of the hearing to the applicant at least thirty days prior to the hearing. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to appeal. Such appeal shall be in accordance with the Administrative Procedure Act.

(5) If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years prior to filing the current application, the department may grant or deny such application without another hearing.

Source: Laws 2007, LB463, § 50.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-151 Credentialing system; administrative costs; how paid. (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the

recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp., 2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 6, with LB 283, section 1, and LB 463, section 51, to reflect all amendments.
Note: The changes made by LB 236 and LB 283 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Fees of state boards, see sections 33-151 and 33-152.

38-152 Base costs of credentialing. Base costs of credentialing are the costs that are common to all professions and businesses listed in section 38-121 and include the following:

(1) Salaries and benefits for employees of the department who work with credentialing activities;

(2) Shared operating costs for credentialing activities that are not specific to a particular profession or business such as indirect costs, rent, and utilities;

(3) Costs related to compliance assurance, including investigative costs, contested case costs, and compliance monitoring;

(4) Costs of the Licensee Assistance Program under section 38-175;

(5) Capital costs, including office equipment and computer hardware or software, which are not specific to a particular profession or business; and

(6) Other reasonable and necessary costs as determined by the department.

Source: Laws 2003, LB 242, § 24; R.S.1943, (2003) § 71-162.01; Laws 2007, LB463, § 52. Operative date December 1, 2008.

38-153 Variable costs of credentialing. Variable costs of credentialing are the costs that are unique to a specific profession or business listed in section 38-121 and include the following:

(1) Per diems which are paid to members of the appropriate board;

(2) Operating costs that are specific to a particular profession or business, including publications, conference registrations, and subscriptions;

(3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or business, including car rental, gas, and mileage charges but not salaries;

(4) Costs to operate and administer the Nebraska Center for Nursing, which costs shall be derived from credentialing fees of registered and practical nurses in accordance with section 71-1798.01; and

(5) Other reasonable and necessary costs as determined by the appropriate board or the department.

Source: Laws 2003, LB 242, § 25; Laws 2005, LB 243, § 1; R.S.1943, (2003), § 71-162.02; Laws 2007, LB463, § 53.
Operative date December 1, 2008.

38-154 Adjustments to the cost of credentialing. Adjustments to the cost of credentialing include, but are not limited to:

(1) Revenue from sources that include, but are not limited to:

(a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;

(b) Certification and verification of credentials;

(c) Administrative fees;

(d) Reinstatement fees;

(e) General Funds and federal funds;

(f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;

(g) Gifts; and

(h) Grants; and

(2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54.
Operative date December 1, 2008.

Cross Reference

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection. (1) The department, with the recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 38-151, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

(a) Initial credentials, which include, but are not limited to:

(i) Licensure, certification, or registration;

(ii) Add-on or specialty credentials;

(iii) Temporary, provisional, or training credentials; and

(iv) Supervisory or collaborative relationship credentials;

(b) Applications to renew licenses, certifications, and registrations;

(c) Approval of continuing education courses and other methods of continuing competency; and

(d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date and the initial credentialing fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential shall be valid until the next subsequent renewal date.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55. Operative date December 1, 2008.

38-156 Administrative and other fees; amount. (1) The department shall retain a twenty-five-dollar administrative fee from each credentialing fee established under section 38-155 for a denied credential or a withdrawn application, except that (a) if the credentialing fee is less than twenty-five dollars, the fee shall be forfeited and (b) an examination fee shall not be returned.

(2) The department shall collect fees for services as follows:

(a) Ten dollars for a duplicate original or reissued credential;

(b) Twenty-five dollars for certification of a credential pursuant to section 38-125;

(c) Five dollars for verification of a credential pursuant to section 38-125; and

(d) A reinstatement fee of thirty-five dollars in addition to the renewal fee to reinstate an expired or inactive credential for professions specified in section 38-121.

Source: Laws 2003, LB 242, § 28; R.S.1943, (2003), § 71-162.05; Laws 2007, LB463, § 56. Operative date December 1, 2008.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment. (1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121 except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) Any money in the Licensee Assistance Cash Fund on December 1, 2008, shall be transferred to the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57.
Operative date December 1, 2008.

Cross Reference

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

38-158 Boards; appointment; vacancy. (1) The State Board of Health shall appoint members to the boards designated in section 38-167 except the Board of Emergency Medical Services and the Water Well Standards and Contractors' Licensing Board.

(2) Any vacancy in the membership of a board caused by death, resignation, removal, or otherwise shall be filled for the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981, LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6; R.S.1943, (2003), § 71-111; Laws 2007, LB463, § 58.
Operative date December 1, 2008.

38-159 Board; application; professional member; state association or society recommendation. (1) Any person who desires to be considered for an appointment to a board appointed by the State Board of Health and who possesses the necessary qualifications for such appointment may apply in a manner specified by the State Board of Health. The State Board of Health shall consider such applications and may appoint any qualified person so applying to the appropriate board.

(2) A state association or society, or its managing board, for each profession may submit to the State Board of Health a list of persons of recognized ability in such profession who have the qualifications prescribed for professional members of the board for that particular profession. If such a list is submitted, the State Board of Health shall consider the names on such list and may appoint one of the persons so named.

Source: Laws 1927, c. 167, § 17, p. 458; C.S.1929, § 71-307; Laws 1939, c. 91, § 3, p. 394; C.S.Supp.,1941, § 71-307; R.S.1943, § 71-117; Laws 1979, LB 427, § 8; Laws 1992, LB 860, § 1; Laws 1999, LB 828, § 21; R.S.1943, (2003), § 71-117; Laws 2007, LB463, § 59.
Operative date December 1, 2008.

38-160 Board; member; removal; procedure; grounds. (1) The State Board of Health shall have power to remove from office at any time any member of a board for which it appoints the membership, after a public hearing pursuant to the Administrative Procedure Act, 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 not maintaining the qualifications established in

sections 38-164 and 38-165, for any cause for which a credential in the profession or business involved may be suspended or revoked under section 38-178 or 38-179, or for a lack of a credential in the profession or business involved.

(2) The State Board of Health shall have full access to such complaints or investigational records as necessary and appropriate in the discharge of its duties under subsection (1) of this section and section 38-158.

Source: Laws 1927, c. 167, § 18, p. 458; C.S.1929, § 71-308; R.S.1943, § 71-118; Laws 1979, LB 427, § 9; Laws 1986, LB 286, § 35; Laws 1986, LB 579, § 27; Laws 1987, LB 473, § 12; Laws 1993, LB 187, § 6; Laws 1994, LB 1210, § 20; Laws 1999, LB 828, § 22; R.S.1943, (2003), § 71-118; Laws 2007, LB463, § 60.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-161 Boards; purpose; duties; advisory committees or bodies authorized. (1) The purpose of each board is to protect the health, safety, and welfare of the public as prescribed in the Uniform Credentialing Act.

(2) The duties of each board include, but are not limited to, (a) setting the minimum standards of proficiency and competency in accordance with section 38-126, (b) providing recommendations in accordance with section 38-149, (c) providing recommendations related to the issuance or denial of credentials, disciplinary action, and changes in legislation, and (d) providing the department with recommendations on regulations to carry out the Uniform Credentialing Act in accordance with section 38-126.

(3) Each board may appoint advisory committees or other advisory bodies as necessary for specific purposes. At least one board member shall serve on each advisory committee or body, and other members may be appointed from outside the board.

Source: Laws 1982, LB 448, § 3; Laws 1987, LB 473, § 7; Laws 1999, LB 828, § 16; R.S.1943, (2003), § 71-112.03; Laws 2007, LB463, § 61.
Operative date December 1, 2008.

38-162 Boards; membership. Except as otherwise provided in the Uniform Credentialing Act:

(1) Each board shall consist of four members;

(2) Each board shall have at least one public member; and

(3) If a board has eleven or more members, it shall have at least three public members.

Source: Laws 1927, c. 167, § 13, p. 457; C.S.1929, § 71-303; Laws 1943, c. 150, § 5, p. 540; R.S.1943, § 71-113; Laws 1963, c. 408, § 4, p. 1311; Laws 1971, LB 587, § 2; Laws 1978, LB 406, § 5; Laws 1979, LB 427, § 6; Laws 1980, LB 94, § 3; Laws 1983, LB 476, § 1; Laws 1984, LB 481, § 10; Laws 1985, LB 129, § 6; Laws 1986, LB 277, § 6; Laws 1986, LB 286, § 33; Laws 1986, LB 579, § 25; Laws 1986, LB 355, § 12; Laws 1987, LB 473, § 8; Laws 1988, LB 1100, § 9; Laws 1988, LB 557, § 17; Laws 1993, LB 669, § 7; Laws 1994, LB 1223, § 4; Laws 1995, LB 406, § 15; Laws 1999, LB 828, § 17; Laws 2004, LB 1083, § 108; Laws 2006, LB 994, § 80; R.S.Supp.,2006, § 71-113; Laws 2007, LB463, § 62.
Operative date December 1, 2008.

38-163 Boards; members; term. (1) The members of each board shall be appointed for terms of five years except as otherwise provided in the Uniform Credentialing Act. No member shall be appointed for or serve for more than two consecutive full five-year terms except as otherwise specifically provided in the act.

(2) The term of each member shall commence on the first day of December following the expiration of the term of the member whom such person succeeds except as otherwise provided in the act.

Source: Laws 1943, c. 150, § 8, p. 541; R.S.1943, § 71-116; Laws 1957, c. 298, § 10, p. 1079; Laws 1963, c. 408, § 5, p. 1311; Laws 1971, LB 587, § 4; Laws 1978, LB 406, § 7; Laws 1979, LB 297, § 3; Laws 1979, LB 428, § 2; Laws 1981, LB 451, § 4; Laws 1983, LB 476, § 2; Laws 1984, LB 481, § 12; Laws 1985, LB 129, § 8; Laws 1986, LB 286, § 34; Laws 1986, LB 579, § 26; Laws 1986, LB 926, § 7; Laws 1987, LB 473, § 11; Laws 1988, LB 1100, § 11; Laws 1993, LB 669, § 9; Laws 1994, LB 1210, § 19; Laws 1994, LB 1223, § 5; Laws 1999, LB 828, § 20; Laws 2004, LB 1083, § 110; R.S.Supp.,2006, § 71-116; Laws 2007, LB463, § 63.
Operative date December 1, 2008.

38-164 Boards; professional members; qualifications. (1) A professional member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. Except as otherwise provided in the Uniform Credentialing Act, every professional member of a board appointed on or after December 1, 2008, shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member. For purposes of this section, active practice means devoting a substantial portion of time to rendering professional services.

(2) Each professional member of a board shall have been a resident of Nebraska for one year and shall remain a resident of Nebraska while serving as a board member.

Source: Laws 1927, c. 167, § 14, p. 458; C.S.1929, § 71-304; Laws 1935, c. 142, § 31, p. 530; C.S.Supp.,1941, § 71-304; Laws 1943, c. 150, § 6, p. 540; R.S.1943, § 71-114; Laws 1957, c. 298, § 9, p. 1078; Laws 1978, LB 406, § 6; Laws 1979, LB 427, § 7; Laws 1984, LB 481, § 11; Laws 1985, LB 129, § 7; Laws 1986, LB 926, § 5; Laws 1987, LB 473, § 9; Laws 1988, LB 1100, § 10; Laws 1988, LB 557, § 18; Laws 1993, LB 669, § 8; Laws 1994, LB 1210, § 18; Laws 1995, LB 406, § 16; Laws 1999, LB 828, § 18; Laws 2004, LB 1083, § 109; R.S.Supp.,2006, § 71-114; Laws 2007, LB463, § 64.
Operative date December 1, 2008.

38-165 Boards; public members; qualifications. A public member of a board appointed under the Uniform Licensing Law prior to December 1, 2008, shall remain subject to the requirements of the original appointment until reappointed under the Uniform Credentialing Act. At the time of appointment and while serving as a board member, a public member appointed to a board on or after December 1, 2008, shall:

(1) Have been a resident of this state for one year;

(2) Remain a resident of Nebraska while serving as a board member;

(3) Have attained the age of nineteen years;

(4) Represent the interests and viewpoints of the public;

(5) Not hold an active credential in any profession or business which is subject to the Uniform Credentialing Act, issued in Nebraska or in any other jurisdiction, at any time during the five years prior to appointment;

(6) Not be eligible for appointment to a board which regulates a profession or business in which that person has ever held a credential;

(7) Not be or not have been, at any time during the year prior to appointment, an employee of a member of a profession credentialed by the department, of a facility credentialed pursuant to the Health Care Facility Licensure Act, or of a business credentialed pursuant to the Uniform Credentialing Act;

(8) Not be the parent, child, spouse, or household member of any person presently regulated by the board to which the appointment is being made;

(9) Have no material financial interest in the profession or business regulated by such board; and

(10) Not be a member or employee of the legislative or judicial branch of state government.

Source: Laws 2007, LB463, § 65.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-166 Initial board subject to act; additional qualifications for members. For professions coming within the scope of the Uniform Credentialing Act for the first time:

(1) A professional member of a board shall not be required to have held and maintained an active credential for a period of five years just preceding his or her appointment. Members appointed during the first five years after a profession comes within the scope of the act shall be required to meet the minimum qualifications for credentialing and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by section 38-164;

(2) All professional members appointed to an initial board shall be credentialed within six months after being appointed to the board or within six months after the date by which members of the profession are required to be credentialed, whichever is later. If for any reason a professional member is not credentialed within such time period, a new professional member shall be appointed to take his or her place;

(3) Members shall be appointed to the initial board within thirty days after the effective or operative date, whichever is later, of the legislation providing for credentialing of the profession; and

(4) The terms of the initial board members shall be as follows: One member shall hold office until December 1 of the third year following the year in which the legislation providing for credentialing of the profession became effective; two, including one public member, until December 1 of the fourth year; and two, including one public member, until December 1 of the fifth year.

Source: Laws 2007, LB463, § 66.
Operative date December 1, 2008.

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 Aid Instrument Dispensers and Fitters;

(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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 5, with LB 463, section 67, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-168 Boards; conflict of interest. The department may establish definitions of conflicts of interest for members of the boards and may establish procedures in the case such a conflict arises. For purposes of this section, conflict of interest includes financial, professional, or personal obligations that may compromise or present the appearance of compromising the judgment of a member in the performance of his or her duties.

Source: Laws 1982, LB 448, § 5; Laws 1987, LB 473, § 10; Laws 1999, LB 828, § 19; R.S.1943, (2003), § 71-115.01; Laws 2007, LB463, § 68.
Operative date December 1, 2008.

38-169 Board; organization. Each board shall organize annually at its first meeting subsequent to December 1 and shall select a chairperson, a vice-chairperson, and a secretary from its own membership.

Source: Laws 1927, c. 167, § 20, p. 459; C.S.1929, § 71-310; R.S.1943, § 71-120; Laws 1999, LB 828, § 24; R.S.1943, (2003), § 71-120; Laws 2007, LB463, § 69.
Operative date December 1, 2008.

38-170 Board; business; how transacted. The department shall, as far as practicable, provide for the conducting of the business of the boards by mail and may hold meetings by teleconference or videoconference subject to the Open Meetings Act. Any official action or vote of the members of a board taken by mail shall be preserved in the records of the department and shall be recorded in the board's minutes by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8; Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986, LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16; R.S.Supp.,2006, § 71-121; Laws 2007, LB463, § 70.
Operative date December 1, 2008.

Cross Reference

Open Meetings Act, see section 84-1407.

38-171 Board; advisory committee or body; compensation; limitation; expenses. Each member of a board shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting

business. Traveling and lodging expenses shall be on the same basis as provided in sections 81-1174 to 81-1177. The compensation per day shall not exceed fifty dollars and shall be determined by each board with the approval of the department. Persons serving on an advisory committee or body under section 38-161 shall receive remuneration of expenses as provided in sections 81-1174 to 81-1177, including compensation for time spent in traveling to and from the place of conducting business, and a per diem of fifty dollars.

Source: Laws 1927, c. 167, § 22, p. 459; Laws 1929, c. 161, § 1, p. 556; C.S.1929, § 71-312; Laws 1935, c. 142, § 32, p. 531; C.S.Supp.,1941, § 71-312; R.S.1943, § 71-122; Laws 1955, c. 270, § 1, p. 849; Laws 1957, c. 298, § 11, p. 1079; Laws 1959, c. 318, § 1, p. 1165; Laws 1961, c. 337, § 7, p. 1053; Laws 1965, c. 410, § 1, p. 1315; Laws 1967, c. 438, § 1, p. 1347; Laws 1967, c. 439, § 16, p. 1364; Laws 1969, c. 561, § 1, p. 2287; Laws 1971, LB 587, § 5; Laws 1972, LB 1385, § 1; Laws 1978, LB 406, § 9; Laws 1979, LB 427, § 12; Laws 1981, LB 451, § 5; Laws 1981, LB 204, § 108; Laws 1984, LB 481, § 13; Laws 1985, LB 129, § 10; Laws 1986, LB 926, § 10; Laws 1999, LB 828, § 27; Laws 2003, LB 242, § 17; R.S.1943, (2003), § 71-122; Laws 2007, LB463, § 71.
Operative date December 1, 2008.

38-172 Board; national organization or related meetings; attendance. Each board may select one or more of its members to attend the annual meeting of the national organization of state boards of such profession or other related meetings. Any member so selected shall receive his or her necessary traveling and lodging expenses in attending such meetings on the same basis as provided in sections 81-1174 to 81-1177.

Source: Laws 1927, c. 167, § 24, p. 460; C.S.1929, § 71-314; R.S.1943, § 71-124; Laws 1971, LB 587, § 7; Laws 1981, LB 204, § 110; Laws 1986, LB 926, § 12; Laws 1999, LB 828, § 29; R.S.1943, (2003), § 71-124; Laws 2007, LB463, § 72.
Operative date December 1, 2008.

38-173 Board; liability; exemption; when. No member of a board, no expert retained by the department, and no member of a profession who provides consultation to or testimony for the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board or expert or the consultation or testimony given by such person, if such board member, expert, or person acts without malice and in the reasonable belief that such action, recommendation, consultation, or testimony is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, recommendation is made, or consultation or testimony is provided.

Source: Laws 1976, LB 877, § 24; Laws 1986, LB 286, § 71; Laws 1986, LB 579, § 63; Laws 1996, LB 1044, § 398; Laws 1999, LB 828, § 52; R.S.1943, (2003), § 71-161.19; Laws 2007, LB463, § 73.
Operative date December 1, 2008.

38-174 Department; responsibilities; costs; how paid. The department shall be responsible for the general administration of the activities of each of the boards. The cost of operation and administration of the boards shall be paid from the General Fund and the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1972, LB 1385, § 3; Laws 1980, LB 958, § 1; Laws 1980, LB 847, § 1; Laws 1986, LB 926, § 9; Laws 1991, LB 10, § 1; Laws 1997, LB 307, § 115; Laws 1999, LB 828, § 26; Laws 2003, LB 242, § 16; Laws 2005, LB 256, § 20; R.S.Supp.,2006, § 71-121.01; Laws 2007, LB296, § 300; Laws 2007, LB463, § 74.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 300, with LB 463, section 74, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-175 Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation. (1) The department may contract to provide a Licensee Assistance Program to credential holders regulated by the department. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the abuse, dependence, or active addiction may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the director.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person.

(3) Any report from any person or from the program to the department indicating that a credential holder is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 38-186 to 38-1,100.

(4) No person who makes such a report to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(5) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or when a complaint

has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31; R.S.1943, (2003), § 71-172.01; Laws 2007, LB296, § 322; Laws 2007, LB463, § 75.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 322, with LB 463, section 75, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-176 Director; jurisdiction of proceedings; grounds for denial of credential. (1) The director shall have jurisdiction of proceedings (a) to deny the issuance of a credential, (b) to refuse renewal of a credential, and (c) to discipline a credential holder.

(2) Except as otherwise provided in section 38-1,119, if an applicant for an initial credential or for renewal of a credential to practice a profession does not meet all of the requirements for the credential, the department shall deny issuance or renewal of the credential.

Source: Laws 2007, LB463, § 76.
Operative date December 1, 2008.

38-177 Disciplinary actions; terms, defined. For purposes of sections 38-178, 38-179, and 38-184:

(1) Confidential information means information protected as privileged under applicable law;

(2) Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation; and

(3) Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

Source: Laws 1976, LB 877, § 6; Laws 1978, LB 748, § 36; Laws 1986, LB 318, § 142; Laws 1988, LB 693, § 1; Laws 1988, LB 1100, § 21; R.S.1943, (2003), § 71-161.01; Laws 2007, LB463, § 77.
Operative date December 1, 2008.

38-178 Disciplinary actions; grounds. Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-185 or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(12) Use of untruthful, deceptive, or misleading statements in advertisements;

(13) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(14) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(15) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(16) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(18) Failure to file a report required by section 38-1,124 or 38-1,125;

(19) Failure to maintain the requirements necessary to obtain a credential;

(20) Violation of an order issued by the department;

(21) Violation of an assurance of compliance entered into under section 38-1,108;

(22) Failure to pay an administrative penalty; or

(23) Unprofessional conduct as defined in section 38-179.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp., 2006, § 71-147; Laws 2007, LB463, § 78. Operative date December 1, 2008.

Cross Reference

Uniform Controlled Substances Act, see section 28-401.01.
Uniform Deceptive Trade Practices Act, see section 87-306.

38-179 Disciplinary actions; unprofessional conduct, defined. For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Receipt of fees on the assurance that an incurable disease can be permanently cured;

(2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement, or (d) by a person credentialed pursuant to the Water Well Standards and Contractors' Practice Act;

(3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(4) Cheating on or attempting to subvert the credentialing examination;

(5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;

(6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;

(7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(8) Knowingly disclosing confidential information except as otherwise permitted by law;

(9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;

(10) Failure to keep and maintain adequate records of treatment or service;

(11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

(12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;

(13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;

(14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care; and

(15) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, § 47, p. 466; C.S.1929, § 71-602; Laws 1935, c. 141, § 1, p. 518; C.S.Supp.,1941, § 71-602; Laws 1943, c. 146, § 11, p. 542; R.S.1943, § 71-148; Laws 1979, LB 95, § 2; Laws 1981, LB 466, § 1; Laws 1986, LB 286, § 46; Laws 1986, LB 579, § 38; Laws 1986, LB 926, § 25; Laws 1987, LB 473, § 16; Laws 1988, LB 273, § 9; Laws 1988, LB 1100, § 17; Laws 1991, LB 425, § 11; Laws 1991, LB 456, § 11; Laws 1993, LB 536, § 45; Laws 1994, LB 1210, § 27; Laws 1997, LB 23, § 5; R.S.1943, (2003), § 71-148; Laws 2007, LB463, § 79.
Operative date December 1, 2008.

Cross Reference

Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction. For purposes of subdivision (11) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80.
Operative date December 1, 2008.

38-181 Initial credential to operate business; renewal of credential; denial by department; powers of department. If an applicant for an initial credential to operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential to operate a business or a credential holder applying for renewal of the credential to operate a business has committed any of the acts set out in section 38-182, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 81.
Operative date December 1, 2008.

38-182 Disciplinary actions; credential to operate business; grounds. A credential to operate a business may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the following grounds:

(1) Violation of the Uniform Credentialing Act or the rules and regulations adopted and promulgated under such act relating to the applicable business;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of an individual served or employed by the business;

(4) Failure to allow an agent or employee of the department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department; or

(5) Discrimination or retaliation against an individual served or employed by the business who has submitted a complaint or information to the department or is perceived to have submitted a complaint or information to the department.

Source: Laws 2007, LB463, § 82.
Operative date December 1, 2008.

38-183 Credential issued by department; temporary suspension or limitation; notice and hearing not required; when; duration. (1) The department may temporarily suspend or temporarily limit any credential issued by the department without notice or a hearing if the director determines that there is reasonable cause to believe that grounds exist under section 38-178 or 38-182 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or temporary limitation of the credential.

(2) A continuance of the hearing shall be granted by the department upon the written request of the credential holder, and such a continuance shall not exceed thirty days unless waived by the credential holder. A temporary suspension or temporary limitation order by the director shall take effect when served upon the credential holder.

(3) In no case shall a temporary suspension or temporary limitation of a credential under this section be in effect for a period of time in excess of ninety days unless waived by the credential holder. If a decision is not reached within ninety days, the credential shall be reinstated unless and until the department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

Source: Laws 1986, LB 926, § 26; Laws 1991, LB 456, § 10; Laws 1994, LB 1210, § 26; R.S.1943, (2003), § 71-147.02; Laws 2007, LB463, § 83.
Operative date December 1, 2008.

38-184 Credential; disciplinary actions; time when taken. If an applicant for a credential or a credential holder is convicted of an offense for which the credential may be denied or refused renewal or have other disciplinary measures taken against it in accordance with section 38-196, such denial, refusal of renewal, or disciplinary measures may be taken when the time for appeal of the conviction has elapsed or the conviction has been affirmed on appeal or an order granting probation is made suspending the imposition or the execution

of sentence, irrespective of any subsequent order under any statute allowing such person to withdraw his or her plea of guilty, nolo contendere, or non vult contendere and to enter a plea of not guilty, or setting aside the verdict of guilty or the conviction, or releasing the person from probation, or dismissing the accusation, information, or indictment.

Source: Laws 2007, LB463, § 84.
Operative date December 1, 2008.

38-185 Credential; denial; refuse renewal; notice; hearing. To deny or refuse renewal of a credential, the department shall notify the applicant or credential holder in writing of the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant or credential holder, within such thirty-day period, requests a hearing in writing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

Source: Laws 1927, c. 167, § 49, p. 467; C.S.1929, § 71-604; R.S.1943, § 71-150; Laws 1986, LB 286, § 48; Laws 1986, LB 579, § 40; Laws 1988, LB 1100, § 19; Laws 1991, LB 456, § 12; Laws 1994, LB 1210, § 29; Laws 1996, LB 1044, § 382; R.S.1943, (2003), § 71-150; Laws 2007, LB296, § 304; Laws 2007, LB463, § 85.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 304, with LB 463, section 85, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-186 Credential; discipline; petition by Attorney General; hearing; department; powers and duties. (1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through (17) and (19) through (31) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 2007, LB463, § 86.
Operative date December 1, 2008.

38-187 Credential; discipline; petition; form; other pleadings. The following rules shall govern the form of the petition in cases brought pursuant to section 38-186:

(1) The state shall be named as plaintiff and the credential holder as defendant;

(2) The charges against the credential holder shall be stated with reasonable definiteness;

(3) Amendments may be made as in ordinary actions in the district court; and

(4) All allegations shall be deemed denied, but the credential holder may plead thereto if he or she desires.

Source: Laws 1927, c. 167, § 51, p. 467; C.S.1929, § 71-606; R.S.1943, § 71-152; Laws 1986, LB 286, § 50; Laws 1986, LB 579, § 42; Laws 1994, LB 1210, § 31; R.S.1943, (2003), § 71-152; Laws 2007, LB463, § 87.
Operative date December 1, 2008.

38-188 Credential; discipline; hearing; time; place. Upon presentation of the petition to the director, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, § 52, p. 468; C.S.1929, § 71-607; R.S.1943, § 71-153; Laws 1986, LB 926, § 27; Laws 1996, LB 1044, § 383; R.S.1943, (2003), § 71-153; Laws 2007, LB296, § 306; Laws 2007, LB463, § 88.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 306, with LB 463, section 88, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-189 Credential; discipline; hearing; notice; how served. Notice of the filing of a petition pursuant to section 38-186 and of the time and place of hearing shall be served upon the credential holder at least ten days before the hearing. The notice may be served by any method specified in section 25-505.01, or the director 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.

Source: Laws 1927, c. 167, § 53, p. 468; C.S.1929, § 71-608; R.S.1943, § 71-154; Laws 1986, LB 286, § 51; Laws 1986, LB 579, § 43; Laws 1991, LB 456, § 13; Laws 1994, LB 1210, § 32; R.S.1943, (2003), § 71-154; Laws 2007, LB463, § 89.
Operative date December 1, 2008.

38-190 Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties. (1) Any petition filed pursuant to section 38-186 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General

by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate board to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board as provided in subsection (1) of this section, the credential holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44; R.S.1943, (2003), § 71-161.03; Laws 2007, LB296, § 311; Laws 2007, LB463, § 90.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-191 Credential; disciplinary action; hearing; failure to appear; effect. If a credential holder fails to appear, either in person or by counsel, at the time and place designated in the notice required by section 38-189, the director, after receiving satisfactory evidence of the truth of the charges, shall order the credential revoked or suspended or shall take any or all of the other appropriate disciplinary measures authorized by section 38-196 against the credential.

Source: Laws 1927, c. 167, § 55, p. 468; C.S.1929, § 71-610; R.S.1943, § 71-156; Laws 1976, LB 877, § 4; Laws 1986, LB 286, § 54; Laws 1986, LB 579, § 46; Laws 1994, LB 1210, § 34; Laws 1996, LB 1044, § 385; R.S.1943, (2003), § 71-156; Laws 2007, LB296, § 309; Laws 2007, LB463, § 91.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 309, with LB 463, section 91, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-192 Credential; disciplinary action; director; sanctions; powers. If the director determines upon completion of a hearing under section 38-186 that a violation has occurred, the director may, at his or her discretion, consult with the appropriate board concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a board, the credential holder and the Attorney General shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines. The director shall have the authority through entry

of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196.

Source: Laws 2007, LB463, § 92.
Operative date December 1, 2008.

38-193 Credential; disciplinary action; partial-birth abortion; director; powers and duties. If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.

Source: Laws 2007, LB463, § 93.
Operative date December 1, 2008.

38-194 Credential; disciplinary action; costs; how taxed. If the order issued regarding discipline of a credential is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the state is the unsuccessful party, the costs shall be paid out of any money in the Professional and Occupational Credentialing Cash Fund available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Source: Laws 1927, c. 167, § 56, p. 468; C.S.1929, § 71-611; R.S.1943, § 71-157; Laws 1986, LB 286, § 55; Laws 1986, LB 579, § 47; Laws 1994, LB 1210, § 35; Laws 1996, LB 1044, § 386; Laws 1997, LB 307, § 118; Laws 2003, LB 242, § 21; R.S.1943, (2003), § 71-157; Laws 2007, LB463, § 94.
Operative date December 1, 2008.

38-195 Credential; disciplinary action; costs; when not collectible; how paid. All costs accrued at the instance of the state when it is the successful party in a proceeding to discipline a credential, which the Attorney General certifies cannot be collected from the defendant, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 57, p. 468; C.S.1929, § 71-612; R.S.1943, § 71-158; Laws 1996, LB 1044, § 387; Laws 1997, LB 307, § 119; Laws 2003, LB 242, § 22; R.S.1943, (2003), § 71-158; Laws 2007, LB463, § 95.
Operative date December 1, 2008.

38-196 Credential; disciplinary action; sanctions authorized. Upon the completion of any hearing held regarding discipline of a credential, the director may dismiss the action or impose any of the following sanctions:

(1) Censure;

(2) Probation;

(3) Limitation;

(4) Civil penalty;

(5) Suspension; or

(6) Revocation.

Source: Laws 1927, c. 167, § 54, p. 468; C.S.1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S.1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43; R.S.1943, (2003), § 71-155; Laws 2007, LB296, § 307; Laws 2007, LB463, § 96.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 307, with LB 463, section 96, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-197 Credential; disciplinary action; additional terms and conditions of discipline. If any discipline is imposed pursuant to section 38-196, the director may, in addition to any other terms and conditions of that discipline:

(1) Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;

(2) Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the director. If the director requires the credential holder to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available such a report or reports by his or her physician or physicians or other qualified professionals; and

(3) Limit the extent, scope, or type of practice of the credential holder.

Source: Laws 1976, LB 877, § 7; Laws 1986, LB 286, § 56; Laws 1986, LB 579, § 48; Laws 1991, LB 456, § 15; Laws 1994, LB 1210, § 36; Laws 1996, LB 1044, § 388; R.S.1943, (2003), § 71-161.02; Laws 2007, LB296, § 310; Laws 2007, LB463, § 97.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 310, with LB 463, section 97, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-198 Civil penalty; manner of collection; attorney's fees and costs; disposition. If a civil penalty is imposed pursuant to section 38-196, it shall not exceed twenty thousand dollars. Any civil penalty assessed and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. 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 from receipt, remit 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 1986, LB 926, § 29; R.S.1943, (2003), § 71-155.03; Laws 2007, LB463, § 98.
Operative date December 1, 2008.

38-199 Credential; disciplinary action; suspension; effect. If suspension is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of a profession during the time for which the credential is suspended. The suspension shall be for a definite period of time to be set by the director. The director may provide that the credential shall be (1) automatically reinstated upon expiration of such period, (2) reinstated if the terms and conditions as set by the director are satisfied, or (3) reinstated subject to probation or limitations or conditions upon the practice of the credential holder.

Source: Laws 2007, LB463, § 99.
Operative date December 1, 2008.

38-1,100 Credential; disciplinary action; revocation; effect. If revocation is imposed pursuant to section 38-196, the credential holder shall not engage in the practice of the profession after a credential to practice such profession is revoked. Such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 38-148.

Source: Laws 2007, LB463, § 100.
Operative date December 1, 2008.

38-1,101 Contested cases; chief medical officer; duties. If a chief medical officer is appointed pursuant to section 81-3115, he or she shall perform the duties of the director for decisions in contested cases under the Uniform Credentialing Act other than contested cases under sections 38-1,119 to 38-1,123.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11; R.S.1943, (2003), § 71-155.01; Laws 2007, LB296, § 308; Laws 2007, LB463, § 101.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 308, with LB 463, section 101, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,102 Appeal; procedure. Both parties to disciplinary proceedings under the Uniform Credentialing Act shall have the right of appeal, and the appeal shall be in accordance with the Administrative Procedure Act. The case shall be heard at a time fixed by the district court. It shall be advanced and take precedence over all other cases upon the court calendar except worker's compensation and criminal cases.

Source: Laws 1927, c. 167, § 58, p. 469; C.S.1929, § 71-613; Laws 1943, c. 150, § 14, p. 544; R.S.1943, § 71-159; Laws 1976, LB 877, § 5; Laws 1988, LB 352, § 113; R.S.1943, (2003), § 71-159; Laws 2007, LB463, § 102.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-1,103 Consultant to department from board; authorized. A board may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

Source: Laws 2007, LB463, § 103.
Operative date December 1, 2008.

38-1,104 Complaint; decision not to investigate; notice; review; notice to credential holder; when. (1) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate board may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(2) The department shall notify the credential holder that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

Source: Laws 2007, LB463, § 104.
Operative date December 1, 2008.

38-1,105 Investigations; department; progress reports to appropriate board; board review; board; powers and duties; review by Attorney General; meetings in closed session. (1) The department shall advise the appropriate board on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board.

(2) When the department determines that an investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the credential holder that may be relevant to the investigation, except that (a) reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release to the board and (b) reports provided by any other agency or public or private entity, which reports are confidential in that agency's or

entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review.

(3) The recommendation of the board shall be made part of the completed investigational report of the department and submitted to the Attorney General. The recommendation of the board shall include, but not be limited to:

(a) The specific violations of any statute, rule, or regulation that the board finds substantiated based upon the investigation;

(b) Matters which the board believes require additional investigation; and

(c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(4) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(5) All meetings of the boards or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Source: Laws 2007, LB463, § 105.
Operative date December 1, 2008.

38-1,106 Reports, complaints, and records not public records; limitations on use; prohibited disclosure; penalty; application material; how treated. (1) Reports under sections 38-1,129 to 38-1,136, complaints, and investigational records of the department shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such reports, complaints, or records shall be a public record if made part of the record of a contested case before the department. No person, including, but not limited to, department employees and members of a board, having access to such reports, complaints, or investigational records shall disclose such information in violation of this section, except that the department may exchange such information with law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the department's duties and only under circumstances to ensure against unauthorized access to such information. Violation of this subsection is a Class I misdemeanor.

(2) Investigational records, reports, and files pertaining to an application for a credential shall not be a public record until action is taken to grant or deny the application and may be withheld from disclosure thereafter under section 84-712.05.

Source: Laws 2007, LB463, § 106.
Operative date December 1, 2008.

38-1,107 Violations; department; Attorney General; powers and duties; applicability of section. (1) Except as provided in subsection (2) of this section, the

department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by a credential holder. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credential holder has violated and the appropriate legal action to take. The Attorney General may (a) elect to file a petition under section 38-186 or not to file a petition, (b) negotiate a voluntary surrender or voluntary limitation pursuant to section 38-1,109, or (c) in cases involving a minor or insubstantial violation, refer the matter to the appropriate board for the opportunity to resolve the matter by recommending to the Attorney General that he or she enter into an assurance of compliance with the credential holder in lieu of filing a petition. An assurance of compliance shall not constitute discipline against a credential holder.

(2) This section does not apply to the following professions or businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detection, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58; R.S.1943, (2003), § 71-171.01; Laws 2007, LB463, § 107.
Operative date December 1, 2008.

38-1,108 Referral to board; assurance of compliance; recommendation. Upon referral of a matter under section 38-1,107 by the Attorney General, the board may:

(1) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the credential holder to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the credential holder that he or she will not engage in such conduct, and acknowledgment by the credential holder that violation of the assurance constitutes unprofessional conduct. Such assurance shall be signed by the credential holder and shall become a part of the public record of the credential holder. The credential holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission; or

(2) Recommend that the Attorney General file a petition under section 38-186.

Source: Laws 1991, LB 456, § 26; Laws 1994, LB 1210, § 53; Laws 1997, LB 23, § 7; Laws 1999, LB 828, § 59; R.S.1943, (2003), § 71-171.02; Laws 2007, LB463, § 108.
Operative date December 1, 2008.

38-1,109 Credential holder; voluntarily surrender or limit credential; department; powers; written order of director; violation of terms and conditions; effect. (1) A credential holder may submit to the department an offer to voluntarily surrender or limit any credential issued by the department pursuant to the Uniform Credentialing Act. Any such offer may be made to surrender or limit the credential permanently, for an indefinite period of

time, or for a specific or definite period of time. The offer shall be made in writing and shall include (a) the reason for the offer of voluntary surrender or limitation, (b) whether the offer is for a permanent, indefinite, or definite period of time, and (c) any terms and conditions that the credential holder wishes to have the department consider and apply to the voluntary surrender or limitation of the credential.

(2) The department may accept an offer of voluntary surrender or limitation of a credential (a) based on an offer made by the credential holder on his or her own volition, (b) based on an offer made with the agreement of the Attorney General for cases brought under section 38-1,107 or the legal counsel of the department for cases brought under sections 38-1,119 to 38-1,123 to resolve a pending disciplinary matter, (c) in lieu of filing a petition for disciplinary action, or (d) in response to a notice of disciplinary action.

(3) The department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when such credential (a) is under investigation, (b) has a disciplinary action pending but a disposition has not been rendered, or (c) has had a disciplinary action taken against it.

(4) In all instances, the decision shall be issued in the form of a written order by the director. The order shall be issued within thirty days after receipt of the offer of voluntary surrender or limitation and shall specify (a) whether the department accepts or rejects the offer of voluntary surrender and (b)(i) the terms and conditions under which the voluntary surrender is accepted or (ii) the basis for a rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender shall include, but not be limited to, the duration of the surrender, whether the credential holder may apply to have the credential reinstated, and any terms and conditions for any such reinstatement.

(5) A limitation may be placed upon the right of the credential holder to practice a profession or operate a business to such extent, for such time, and under such conditions as imposed by the director.

(6) Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder shall be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

Source: Laws 1976, LB 877, § 16; Laws 1986, LB 926, § 35; R.S.1943, (2003), § 71-161.11; Laws 2007, LB463, § 109.
Operative date December 1, 2008.

38-1,110 Complaint alleging dependence or disability; director; investigation; report; review by board; finding; effect. (1) When the department has received a complaint or report by any person or any report has been made to the director by the Licensee Assistance Program under section 38-175 alleging that an applicant for a credential or a person credentialed to practice any profession is suffering from abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall investigate such complaint to determine if any

reasonable cause exists to question the qualification of the applicant or credential holder to practice or to continue to practice such profession.

(2) If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credential holder to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the director shall report such finding and evidence supporting it to the appropriate board.

(3) If such board agrees that reasonable cause exists to question the qualification of such applicant or credential holder, the board shall appoint a committee of three qualified physicians or other qualified professionals to examine the applicant or credential holder and to report their findings and conclusions to the board. The cost of the examination shall be treated as a base cost of credentialing under section 38-152. The board shall then consider the findings and the conclusions of the physicians or other qualified professionals and any other evidence or material which may be submitted to that board by the applicant or credential holder, by the director, or by any other person and shall then determine if the applicant or credential holder is qualified to practice or to continue to practice such profession in the State of Nebraska.

(4) If such board finds the applicant or credential holder to be not qualified to practice or to continue to practice such profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the ability of the credential holder to practice such profession in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23; R.S.1943, (2003), § 71-161.13; Laws 2007, LB296, § 315; Laws 2007, LB463, § 110.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 315, with LB 463, section 110, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,111 Credential; disciplinary action because of physical or mental disability; duration; when issued, returned, or reinstated; manner. (1) The denial, refusal of renewal, limitation, or suspension of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal pursuant to section 38-1,113 or until the cause of such denial, refusal of renewal, limitation, or suspension no longer exists and the appropriate board finds, upon competent examination or evaluation by a qualified physician or other

qualified professional selected or approved by the department, that the applicant or credential holder is qualified to engage in the practice of the profession. The cost of the examination or evaluation shall be paid by the applicant or credential holder.

(2) Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove any limitation on such credential if the applicant or credential holder is otherwise qualified as determined by the appropriate board to practice or to continue in the practice of the profession.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50; R.S.1943, (2003), § 71-161.14; Laws 2007, LB296, § 316; Laws 2007, LB463, § 111.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 316, with LB 463, section 111, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,112 Refusal to submit to physical or mental examination or chemical dependency evaluation; effect. Refusal of an applicant or credential holder to submit to a physical or mental examination or chemical dependency evaluation requested by the appropriate board or the department pursuant to section 38-1,110 or 38-1,111 to determine his or her qualifications to practice or to continue in the practice of the profession for which application was made or for which he or she is credentialed by the department shall be just cause for denial of the application or for refusal of renewal or suspension of his or her credential automatically by the director until such examination or evaluation has been made.

Source: Laws 1976, LB 877, § 20; Laws 1986, LB 286, § 67; Laws 1986, LB 579, § 59; Laws 1994, LB 1210, § 44; Laws 1996, LB 1044, § 395; Laws 1999, LB 828, § 51; R.S.1943, (2003), § 71-161.15; Laws 2007, LB463, § 112.
Operative date December 1, 2008.

38-1,113 Disciplinary action involving dependence or disability; appeal. Any applicant or credential holder shall have the right to request a hearing on an order denying, refusing renewal of, limiting, suspending, or revoking a credential to practice a profession because of abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance that impairs the ability to practice the profession or illness, deterioration, or disability that impairs the ability to practice the profession. Such hearing shall be conducted in accordance with the Administrative Procedure Act. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 38-1,110 shall continue in effect until reversed on appeal unless otherwise disposed of pursuant to section 38-1,111.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24; R.S.1943, (2003), § 71-161.16; Laws 2007, LB296, § 317; Laws 2007, LB463, § 113.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 317, with LB 463, section 113, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-1,114 Practicing profession or business without credential; injunction. Any person engaging in the practice of any profession or business without the appropriate credential may be restrained by temporary and permanent injunctions.

Source: Laws 1927, c. 167, § 63, p. 471; C.S.1929, § 71-801; Laws 1943, c. 150, § 17, p. 546; R.S.1943, § 71-164; Laws 1994, LB 1210, § 48; R.S.1943, (2003), § 71-164; Laws 2007, LB463, § 114. Operative date December 1, 2008.

38-1,115 Prima facie evidence of practice without being credentialed; conditions. It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

(1) The person admits to engaging in practice;

(2) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;

(3) Billing or payment records document the provision of service, care, or treatment by the person;

(4) Service, care, or treatment records document the provision of service, care, or treatment by the person;

(5) Appointment records indicate that the person was engaged in practice;

(6) Water well registrations or other government records indicate that the person was engaged in practice; and

(7) The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

Source: Laws 2007, LB463, § 115. Operative date December 1, 2008.

38-1,116 Practicing without credential; operating business without credential; administrative penalty; procedure; disposition; attorney's fees and costs. (1) The department may assess an administrative penalty of ten dollars per day for each day that evidence exists of practice prior to issuance, renewal after expiration, or reinstatement of a credential to practice a profession or operate a business. The total penalty shall not exceed one thousand dollars.

(2) When the department assesses an administrative penalty, the department shall provide written notice of the assessment to the person. The notice shall be delivered in the manner prescribed by the department and shall include notice of the opportunity for a hearing.

(3) The department shall, within thirty days after receipt, remit an administrative penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska. An administrative 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 a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty.

Source: Laws 2003, LB 242, § 29; R.S.1943, (2003), § 71-164.01; Laws 2007, LB463, § 116. Operative date December 1, 2008.

38-1,117 False impersonation; fraud; aiding and abetting; use of false documents; penalty. Any person who (1) presents to the department a document which is false or of which he or she is not the rightful owner for the purpose of procuring a credential, (2) falsely impersonates anyone to whom a credential has been issued by the department, (3) falsely holds himself or herself out to be a person credentialed by the department, (4) aids and abets another who is not credentialed to practice a profession that requires a credential, or (5) files or attempts to file with the department any false or forged diploma, certificate, or affidavit of identification or qualification shall be guilty of a Class IV felony.

Source: Laws 1927, c. 167, § 65, p. 471; C.S.1929, § 71-803; R.S.1943, § 71-166; Laws 1977, LB 39, § 141; Laws 1986, LB 286, § 73; Laws 1986, LB 579, § 65; Laws 1986, LB 926, § 38; Laws 1994, LB 1210, § 49; R.S.1943, (2003), § 71-166; Laws 2007, LB463, § 117. Operative date December 1, 2008.

38-1,118 General violations; penalty; second offenses; penalty. Any person violating any of the provisions of the Uniform Credentialing Act, except as specific penalties are otherwise imposed in the act, shall be guilty of a Class III misdemeanor. Any person for a second violation of any of the provisions of the act, for which another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1927, c. 167, § 66, p. 471; C.S.1929, § 71-804; R.S.1943, § 71-167; Laws 1977, LB 39, § 142; R.S.1943, (2003), § 71-167; Laws 2007, LB463, § 118. Operative date December 1, 2008.

38-1,119 Certain professions and businesses; sections applicable; initial credential; renewal of credential; denial or refusal to renew; department; powers. (1) Sections 38-1,119 to 38-1,123 apply to the following professions and businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; radon detention, measurement, and mitigation; water system operation; and constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) If an applicant for an initial credential to practice a profession or operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential or a credential holder applying for renewal of the credential has committed any of the acts set out in section 38-178 or 38-182, as applicable, the department may deny issuance or refuse renewal of the credential or may

issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 119.
Operative date December 1, 2008.

38-1,120 Certain professions and businesses; disciplinary actions; grounds; advice of board; notice; hearing; director; decision; review. (1) A credential to practice a profession or operate a business subject to section 38-1,119 may be denied, refused renewal, or have disciplinary measures taken against it in accordance with section 38-196 on any of the grounds set out in section 38-178 or 38-182, as applicable. The department shall obtain the advice of the appropriate board in carrying out these duties. If the department determines to deny, refuse renewal of, or take disciplinary action against a credential, the department shall send to the applicant or credential holder a notice to the last address of record. The notice shall state the determination of the department, the reasons for the determination, a description of the nature of the violation and the statute, rule, or regulation violated, and the nature of the action being taken. The denial, refusal to renew, or disciplinary action shall become final thirty days after the mailing of the notice unless the applicant or credential holder, during such thirty-day period, makes a written request for a hearing.

(2) The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the determination of the department. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 120.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-1,121 Certain professions and businesses; disciplinary actions; complaint confidential; immunity. A complaint submitted to the department regarding a credential holder subject to section 38-1,119 shall be confidential. A person making such a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

Source: Laws 2007, LB463, § 121.
Operative date December 1, 2008.

38-1,122 Certain professions and businesses; disciplinary actions; emergency; department; powers; hearing; director; decision; review. (1) If the department determines that an emergency exists requiring immediate action against a credential subject to section 38-1,119, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring such action be taken as the department deems

necessary to meet the emergency, including, but not limited to, suspension or limitation of the credential. Such order shall become effective immediately. Any credential holder to whom such order is directed shall comply immediately. Such order shall become final ten days after mailing of the order unless the credential holder, during such period, makes a written request for a hearing.

(2) The hearing shall be held as soon as possible and not later than fifteen days after the request for hearing. The hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation. On the basis of such hearing, the director shall affirm, modify, or rescind the order. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

Source: Laws 2007, LB463, § 122.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-1,123 Certain professions and businesses; disciplinary actions; costs; how paid. If an order issued after a hearing under section 38-1,120 or 38-1,122 is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the department is the unsuccessful party, the department shall pay the costs. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the department when it is the successful party, which the department certifies cannot be collected from the other party, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2007, LB463, § 123.
Operative date December 1, 2008.

38-1,124 Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report. (1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The appropriate board may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business as a measure to obtain compliance with the applicable

credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1; Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 7, with LB 463, section 124, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,125 Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report. (1) Every credential holder, except pharmacist interns and pharmacy technicians, shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from the staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility

or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any jurisdiction due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by any jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in, or discipline of a credential related to the applicable profession by, a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes a danger to the public health and safety by the credential holder's continued practice; or

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 125, and was amended by Laws 2007, LB 247, section 61.

38-1,126 Report; confidential; immunity; use of documents. (1) A report made to the department under section 38-1,124 or 38-1,125 shall be confidential.

(2) Any person making such a report to the department, except a person who is self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under section 38-1,124 or 38-1,125.

(3) Persons who are members of committees established under the Patient Safety Improvement Act or sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report under section 38-1,124 or 38-1,125. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under section 38-1,124 or 38-1,125 only because he or she attended or testified before such committee.

(4) Documents from original sources shall not be construed as immune from discovery or use in actions under section 38-1,125.

Source: Laws 2007, LB463, § 126.
Operative date December 1, 2008.

Cross Reference

Patient Safety Improvement Act, see section 71-8701.

38-1,127 Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a profession regulated under the Uniform Credentialing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a credential holder, including settlements made prior to suit, arising out of the acts or omissions of the credential holder; or

(b) Takes action adversely affecting the privileges or membership of a credential holder in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one

thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 1994, LB 1223, § 12; Laws 1995, LB 563, § 3; Laws 1996, LB 414, § 2; Laws 1997, LB 138, § 43; Laws 1997, LB 222, § 5; Laws 2000, LB 819, § 84; Laws 2000, LB 1115, § 13; Laws 2005, LB 256, § 22; Laws 2005, LB 361, § 33; R.S.Supp.,2006, § 71-168.02; Laws 2007, LB463, § 127. Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

38-1,128 Peer review committee; health practitioners; immunity from liability; when. No member of a peer review committee of a state or local association or society composed of persons credentialed under the Uniform Credentialing Act shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to such member after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, § 1; R.S.1943, (2003), § 71-147.01; Laws 2007, LB463, § 128. Operative date December 1, 2008.

38-1,129 Insurer; report violation to department. Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(1) Any insurer having knowledge of any violation of any of the Uniform Credentialing Act governing the profession of the person being reported whether or not such person is credentialed shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be credentialed whether or not such person is credentialed.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133; R.S.1943, (2003), § 71-1,199; Laws 2007, LB463, § 129.
Operative date December 1, 2008.

38-1,130 Insurer; report to department; form. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the credential holder and consumer, when the insurer:

(1) Has reasonable grounds to believe that a person required to be credentialed has committed a violation of the provisions of the Uniform Credentialing Act governing the profession of such person whether or not such person is credentialed;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a person required to be credentialed whether or not such person is credentialed, including settlements made prior to suit in which the consumer releases any professional liability claim against the insurer, health care facility or health care service, or person required to be credentialed, arising out of the acts or omissions of such person;

(3) Takes an adverse action affecting the coverage provided by the insurer to a person required to be credentialed, whether or not such person is credentialed, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action does not include raising rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93; R.S.1943, (2003), § 71-1,200; Laws 2007, LB152, § 1; Laws 2007, LB247, § 62; Laws 2007, LB463, § 130.

Note: The changes made by LB 152 became effective September 1, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-1,131 Insurer; report to department; when. A report made under section 38-1,129 or 38-1,130 shall be made within thirty days after the date of the violation, action, event, or request. Nothing in such sections shall be construed to require an insurer to report based on information gained due to the filing of a claim for payment under a health insurance policy by or on behalf of a person required to be credentialed whether or not such person is credentialed.

Source: Laws 2007, LB463, § 131.
Operative date December 1, 2008.

38-1,132 Insurer; alternative reports authorized; supplemental report. For purposes of sections 38-1,129 and 38-1,130, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as such act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department. For purposes of sections 38-1,129 and 38-1,130, the department shall accept a copy of a report made to any governmental agency charged by law with carrying out any of the provisions of the Uniform Credentialing Act or any person authorized by law to make arrests within the State of Nebraska and may require a supplemental report to the extent such copy does not contain the information required by the department.

Source: Laws 2007, LB463, § 132.
Operative date December 1, 2008.

Cross Reference

Nebraska Hospital-Medical Liability Act, see section 44-2855.

38-1,133 Insurer; failure to make report or provide information; penalty. Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 38-1,129 or 38-1,130 within thirty days after the violation, action, event, or request is guilty of a Class III misdemeanor. Any insurer who violates this section a second or subsequent time is guilty of a Class II misdemeanor.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135; R.S.1943, (2003), § 71-1,201; Laws 2007, LB463, § 133.
Operative date December 1, 2008.

38-1,134 Insurer; reports; disclosure restricted. To the extent that reports made under section 38-1,129 or 38-1,130 contain or relate to privileged communications between consumer and credential holder, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the consumer involved or the reports are made part of the record in a contested case under section 38-186, in which case such reports shall only be disclosed to the extent they are made a part of such record.

Source: Laws 1982, LB 421, § 5; Laws 1991, LB 456, § 31; Laws 1994, LB 1223, § 22; R.S.1943, (2003), § 71-1,202; Laws 2007, LB463, § 134.
Operative date December 1, 2008.

38-1,135 Insurer; immunity from liability. Any insurer or employee of an insurer making a report as required by section 38-1,129 or 38-1,130 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between consumer and physician or between consumer and professional

counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, § 7; Laws 1993, LB 130, § 5; Laws 1994, LB 1223, § 23; R.S.1943, (2003), § 71-1,204; Laws 2007, LB463, § 135.
Operative date December 1, 2008.

38-1,136 Violation of credential holder-consumer privilege; sections, how construed. Nothing contained in sections 38-1,129 to 38-1,136 shall be construed so as to require any credential holder to violate a privilege between a credential holder and a consumer.

Source: Laws 1982, LB 421, § 8; R.S.1943, (2003), § 71-1,205; Laws 2007, LB463, § 136.
Operative date December 1, 2008.

38-1,137 Clerk of county or district court; report convictions and judgments of credentialed person; Attorney General or prosecutor; duty. The clerk of any county or district court in this state shall report to the department the conviction of any person credentialed by the department under the Uniform Credentialing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such credential holder arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the credential of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the director and the State Court Administrator.

Source: Laws 1994, LB 1223, § 24; Laws 1995, LB 563, § 39; Laws 1996, LB 414, § 10; Laws 1996, LB 1044, § 480; Laws 1997, LB 138, § 45; Laws 2000, LB 1115, § 24; Laws 2005, LB 256, § 32; R.S.Supp.,2006, § 71-1,339; Laws 2007, LB296, § 362; Laws 2007, LB463, § 137.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,138 Complaint; investigation; confidentiality; immunity; department; powers and duties. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Credentialing Act or rules and regulations issued under such act. A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56; R.S.1943, (2003), § 71-168.01; Laws 2007, LB463, § 138.
Operative date December 1, 2008.

38-1,139 Violations; prosecution; duty of Attorney General and county attorney. Upon the request of the department, the Attorney General shall institute in the name of the state the proper civil or criminal proceedings against any person regarding whom a complaint has been made, charging him or her with violation of any of the provisions of the Uniform Credentialing Act, and the county attorney, at the request of the Attorney General or of the department, shall appear and prosecute such action when brought in his or her county.

Source: Laws 1927, c. 167, § 70, p. 472; C.S.1929, § 71-904; R.S.1943, § 71-171; Laws 1991, LB 456, § 24; R.S.1943, (2003), § 71-171; Laws 2007, LB463, § 139.
Operative date December 1, 2008.

ARTICLE 2

ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT

Section.

38-201 Act, how cited. Sections 38-201 to 38-212 shall be known and may be cited as the Advanced Practice Registered Nurse Practice Act.

Source: Laws 2005, LB 256, § 36; R.S.Supp.,2006, § 71-17,131; Laws 2007, LB463, § 140. Operative date December 1, 2008.

38-202 Legislative findings and declarations. The Legislature finds and declares that:

(1) Because of the geographic maldistribution of health care services in Nebraska, it is necessary to utilize the skills and proficiency of existing health professionals more efficiently;

(2) It is necessary to encourage the more effective utilization of the skills of registered nurses by enabling them to perform advanced roles in nursing; and

(3) The purpose of the Advanced Practice Registered Nurse Practice Act is to encourage registered nurses to perform advanced roles in nursing.

Source: Laws 2005, LB 256, § 37; R.S.Supp.,2006, § 71-17,132; Laws 2007, LB463, § 141. Operative date December 1, 2008.

38-203 Definition, where found. For purposes of the Advanced Practice Registered Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definition found in section 38-204 applies.

Source: Laws 2005, LB 256, § 38; R.S.Supp.,2006, § 71-17,133; Laws 2007, LB463, § 142. Operative date December 1, 2008.

38-204 Board, defined. Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 143. Operative date December 1, 2008.

38-205 Board; members; qualifications; terms. (1) Until July 1, 2007, the board shall consist of (a) five advanced practice registered nurses representing different advanced practice registered nurse specialties for which a license has been issued, (b) five physicians licensed under the Uniform Licensing Law to practice medicine in Nebraska, at least three of whom shall have a current collaborating relationship with an advanced practice registered nurse, (c) three consumer members, and (d) one licensed pharmacist.

(2) On and after July 1, 2007, the board shall consist of:

(a) One nurse practitioner holding a license under the Nurse Practitioner Practice Act, one certified nurse midwife holding a license under the Certified Nurse Midwifery Practice Act, one certified registered nurse anesthetist holding a license under the Certified Registered Nurse Anesthetist Practice Act, and one clinical nurse specialist holding a license under the Clinical Nurse Specialist Practice Act, except that the initial clinical nurse specialist appointee may be a clinical nurse specialist practicing pursuant to the Nurse Practice Act as such act existed prior to July 1, 2007. Of the initial appointments under this subdivision, one shall be for a two-year term, one shall be for a three-year term, one shall be for a four-year term, and

one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms;

(b) Three physicians, one of whom shall have a professional relationship with a nurse practitioner, one of whom shall have a professional relationship with a certified nurse midwife, and one of whom shall have a professional relationship with a certified registered nurse anesthetist. Of the initial appointments under this subdivision, one shall be for a three-year term, one shall be for a four-year term, and one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms; and

(c) Two public members. Of the initial appointments under this subdivision, one shall be for a three-year term, and one shall be for a four-year term. All subsequent appointments under this subdivision shall be for five-year terms.

(3) Members of the board serving immediately before July 1, 2007, shall serve until members are appointed and qualified under subsection (2) of this section.

Source: Laws 1996, LB 414, § 27; Laws 2000, LB 1115, § 42; R.S.1943, (2003), § 71-1718.01; Laws 2005, LB 256, § 39; R.S.Supp.,2006, § 71-17,134; Laws 2007, LB185, § 36; Laws 2007, LB463, § 144.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.

38-206 Board; duties. The board shall:

(1) Establish standards for integrated practice agreements between collaborating physicians and certified nurse midwives, and nurse practitioners;

(2) Monitor the scope of practice by certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(3) Recommend disciplinary action relating to licenses of advanced practice registered nurses, certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(4) Engage in other activities not inconsistent with the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act; and

(5) Adopt rules and regulations to implement the Advanced Practice Registered Nurse Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, and the Nurse Practitioner Practice Act, for promulgation by the department as provided in section 38-126. Such rules and regulations shall also include: (a) Approved certification organizations and approved certification programs; and (b) professional liability insurance.

Source: Laws 1996, LB 414, § 28; Laws 2000, LB 1115, § 43; Laws 2002, LB 1021, § 56; R.S.1943, (2003), § 71-1718.02; Laws 2005, LB 256, § 40; R.S.Supp.,2006, § 71-17,135; Laws 2007, LB185, § 37; Laws 2007, LB463, § 145.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Practitioner Practice Act, see section 38-2301.

38-207 License; issuance; department; powers and duties. The department shall issue a license as an advanced practice registered nurse to a registered nurse who meets the requirements of subsection (1) or (3) of section 38-208. The department may issue a license as an advanced practice registered nurse to a registered nurse pursuant to subsection (2) of section 38-208.

Source: Laws 2005, LB 256, § 41; R.S.Supp.,2006, § 71-17,136; Laws 2007, LB463, § 146. Operative date December 1, 2008.

38-208 License; qualifications. (1) An applicant for initial licensure as an advanced practice registered nurse shall:

(a) Be licensed as a registered nurse under the Nurse Practice Act or have authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Be a graduate of or have completed a graduate-level advanced practice registered nurse program in a clinical specialty area of certified registered nurse anesthetist, clinical nurse specialist, certified nurse midwife, or nurse practitioner, which program is accredited by a national accrediting body;

(c) Be certified as a certified registered nurse anesthetist, a clinical nurse specialist, a certified nurse midwife, or a nurse practitioner, by an approved certifying body or an alternative method of competency assessment approved by the board, pursuant to the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, or the Nurse Practitioner Practice Act, as appropriate to the applicant's educational preparation;

(d) Provide evidence as required by rules and regulations; and

(e) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for discipline under the Nurse Practice Act, the board has found after investigation that sufficient restitution has been made.

(2) The department may issue a license under this section to an applicant who holds a license from another jurisdiction if the licensure requirements of such other jurisdiction meet or exceed the requirements for licensure as an advanced practice registered nurse under the Advanced Practice Registered Nurse Practice Act. An applicant under this subsection shall submit documentation as required by rules and regulations.

(3) A person licensed as an advanced practice registered nurse or certified as a certified registered nurse anesthetist or a certified nurse midwife in this state on July 1, 2007, shall be issued a license by the department as an advanced practice registered nurse on such date.

Source: Laws 2005, LB 256, § 42; R.S.Supp.,2006, § 71-17,137; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.

38-209 License; renewal; requirements. The license of each person licensed under the Advanced Practice Registered Nurse Practice Act shall be renewed at the same time and in the same manner as renewal of a license for a registered nurse and shall require that the applicant have (1) a license as a registered nurse issued by the state or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, (2) documentation of continuing competency, either by reference, peer review, examination, or one or more of the continuing competency activities listed in section 38-145 and established by the board in rules and regulations, and (3) met any specific requirements for renewal under the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, or the Nurse Practitioner Practice Act, as applicable.

Source: Laws 2005, LB 256, § 43; R.S.Supp.,2006, § 71-17,138; Laws 2007, LB185, § 39; Laws 2007, LB463, § 148.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Nurse Licensure Compact, see section 71-1795.
Nurse Practitioner Practice Act, see section 38-2301.

38-210 Expiration of license; conditions. An advanced practice registered nurse's license expires if he or she does not renew his or her license to practice as a registered nurse or is not authorized to practice as a registered nurse in this state under the Nurse Licensure Compact.

Source: Laws 2005, LB 256, § 45; R.S.Supp.,2006, § 71-17,140; Laws 2007, LB185, § 41; Laws 2007, LB463, § 149.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-211 Fees. The department shall establish and collect fees for initial licensure and renewal under the Advanced Practice Registered Nurse Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 150.
Operative date December 1, 2008.

38-212 Use of title. A person licensed as an advanced practice registered nurse in this state may use the title advanced practice registered nurse and the abbreviation APRN.

Source: Laws 2007, LB463, § 151.
Operative date December 1, 2008.

ARTICLE 3

ALCOHOL AND DRUG COUNSELING PRACTICE ACT

Section.

38-301 Act, how cited. Sections 38-301 to 38-321 shall be known and may be cited as the Alcohol and Drug Counseling Practice Act.

Source: Laws 2007, LB463, § 152.
Operative date December 1, 2008.

38-302 Definitions, where found. For purposes of the Alcohol and Drug Counseling Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-303 to 38-309 apply.

Source: Laws 2004, LB 1083, § 115; R.S.Supp.,2006, § 71-1,351; Laws 2007, LB463, § 153.
Operative date December 1, 2008.

38-303 Alcohol and drug counseling, defined. Alcohol and drug counseling means providing or performing the core functions of an alcohol and drug counselor for remuneration.

Source: Laws 2007, LB463, § 154.
Operative date December 1, 2008.

38-304 Alcohol and drug counselor, defined. Alcohol and drug counselor means a person engaged in alcohol and drug counseling.

Source: Laws 2007, LB463, § 155.
Operative date December 1, 2008.

38-305 Alcohol or drug abuse, defined. Alcohol or drug abuse means the abuse of alcohol or other drugs which have significant mood or perception changing capacities, which are likely to be physiologically or psychologically addictive, and the use of which have negative physical, social, or psychological consequences.

Source: Laws 2007, LB463, § 156.
Operative date December 1, 2008.

38-306 Alcohol or drug dependence, defined. Alcohol or drug dependence means cognitive, behavioral, and psychological symptoms indicating the continued use of alcohol or other drugs despite significant alcohol or drug-related problems.

Source: Laws 2007, LB463, § 157.
Operative date December 1, 2008.

38-307 Alcohol or drug disorder, defined. Alcohol or drug disorder means a substance-related disorder as defined by the department in rules and regulations substantially similar with the definitions of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders.

Source: Laws 2007, LB463, § 158.
Operative date December 1, 2008.

38-308 Board, defined. Board means the Board of Alcohol and Drug Counseling.

Source: Laws 2007, LB463, § 159.
Operative date December 1, 2008.

38-309 Core functions, defined. Core functions means the following twelve activities an alcohol and drug counselor performs in the role of counselor: Screening, intake, orientation, assessment, treatment planning, counseling (individual, group, and significant others), case management, crisis intervention, client education, referral, reports and record keeping, and consultation with other professionals in regard to client treatment and services.

Source: Laws 2007, LB463, § 160.
Operative date December 1, 2008.

38-310 Membership on board; qualifications. Membership on the board shall consist of seven professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Three of the professional members shall be licensed alcohol and drug counselors who may also be licensed as psychologists or mental health practitioners, three of the professional members shall be licensed alcohol and drug counselors who are not licensed as psychologists or mental health practitioners, and one of the professional members shall be a psychiatrist, psychologist, or mental health practitioner.

Source: Laws 2007, LB463, § 161.
Operative date December 1, 2008.

38-311 Scope of practice. (1) The scope of practice for alcohol and drug counseling is the application of general counseling theories and treatment methods adapted to specific addiction theory and research for the express purpose of treating any alcohol or drug abuse, dependence, or disorder. The practice of alcohol and drug counseling consists of the following performance areas which encompass the twelve core functions: Clinical evaluation; treatment planning; counseling; education; documentation; and professional and ethical standards.

(2) The performance area of clinical evaluation consists of screening and assessment of alcohol and drug problems, screening of other presenting problems for which referral may be necessary, and diagnosis of alcohol and drug disorders. Clinical evaluation does not include mental health assessment or treatment. An alcohol and drug counselor shall refer a person with co-occurring mental disorders unless such person is under the care of, or previously assessed or diagnosed by, an appropriate practitioner within a reasonable amount of time.

(3) The performance area of treatment planning consists of case management, including implementing the treatment plan, consulting, and continuing assessment and treatment planning; referral; and client advocacy.

(4) The performance area of counseling consists of individual counseling, group counseling, and family or significant other counseling.

(5) The performance area of education consists of education for clients, family of clients, and the community.

Source: Laws 2004, LB 1083, § 116; R.S.Supp.,2006, § 71-1,352; Laws 2007, LB463, § 162. Operative date December 1, 2008.

38-312 License required; exceptions. No person shall engage in alcohol and drug counseling or hold himself or herself out as an alcohol and drug counselor unless he or she is licensed for such purpose pursuant to the Uniform Credentialing Act, except that this section shall not be construed to prevent:

(1) Qualified members of other professions who are credentialed by this state from practice of any alcohol and drug counseling consistent with the scope of practice of their respective professions;

(2) Teaching or the conduct of research related to alcohol and drug counseling with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of alcohol and drug counseling to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(3) The delivery of alcohol and drug counseling by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, alcohol and drug counseling, compulsive gambling counseling, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(4) Duly recognized members of the clergy from providing alcohol and drug counseling in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be alcohol and drug counselors;

(5) The incidental exchange of advice or support by persons who do not represent themselves as engaging in alcohol and drug counseling, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as alcohol and drug counselors or their services as alcohol and drug counseling;

(6) Any person providing emergency crisis intervention or referral services; or

(7) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with alcohol or drug disorders from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 2004, LB 1083, § 117; R.S.Supp.,2006, § 71-1,353; Laws 2007, LB463, § 163. Operative date December 1, 2008.

38-313 License; application; provisional license. (1) A person may apply for a license as an alcohol and drug counselor if he or she meets the requirements provided in section 38-316.

(2) A person may apply for a license as a provisional alcohol and drug counselor which permits such person to practice and acquire the supervised clinical work experience required for licensure as an alcohol and drug counselor. Provisional status may be granted once and held for a time period not to exceed six years, except that if an individual does not complete the supervised clinical work experience required for licensure within the specified six-year period due to unforeseen circumstances as determined by the department, with the recommendation of the board, the individual may apply for one additional provisional license. An individual who is so licensed shall not render services without clinical supervision. An individual who holds provisional licensure shall inform all clients that he or she holds a provisional certification and is practicing under supervision and shall identify the supervisor. An applicant shall meet the requirements provided in section 38-314.

Source: Laws 2004, LB 1083, § 118; R.S.Supp.,2006, § 71-1,354; Laws 2007, LB463, § 164. Operative date December 1, 2008.

38-314 Provisional alcohol and drug counselor; license requirements. To be licensed to practice as a provisional alcohol and drug counselor, an applicant shall:

(1) Have a high school diploma or its equivalent;

(2) Have two hundred seventy hours of education related to the knowledge and skills of alcohol and drug counseling which shall include:

(a) A minimum of forty-five hours in counseling theories and techniques coursework;

(b) A minimum of forty-five hours in group counseling coursework;

(c) A minimum of thirty hours in human growth and development coursework;

(d) A minimum of fifteen hours in professional ethics and issues coursework;

(e) A minimum of thirty hours in alcohol and drug assessment, case planning, and management coursework;

(f) A minimum of thirty hours in multicultural counseling coursework;

(g) A minimum of forty-five hours in medical and psychosocial aspects of alcohol and drug use, abuse, and addiction coursework; and

(h) A minimum of thirty hours in clinical treatment issues in chemical dependency coursework; and

(3) Have supervised practical training which shall:

(a) Include performing a minimum of three hundred hours in the counselor core functions in a work setting where alcohol and drug counseling is provided;

(b) Be a formal, systematic process that focuses on skill development and integration of knowledge;

(c) Include training hours documented by performance date and core function performance areas; and

(d) Include the performance of all counselor core functions with no single function performed less than ten hours.

Source: Laws 2004, LB 1083, § 119; R.S.Supp.,2006, § 71-1,355; Laws 2007, LB463, § 165. Operative date December 1, 2008.

38-315 Practical training supervisor; requirements; duties. (1)(a) The practical training supervisor for supervised practical training required under section 38-314 shall hold one of the following credentials:

(i) Licensure as an alcohol and drug counselor;

(ii) If the practical training is acquired outside of Nebraska, a reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor; or

(iii) Licensure as a physician or psychologist under the Uniform Credentialing Act, or an equivalent credential from another jurisdiction, and sufficient training as determined by the Board of Medicine and Surgery for physicians or the Board of Psychologists for psychologists, in consultation with the Board of Alcohol and Drug Counseling, and adopted and promulgated by the department in rules and regulations.

(b) The practical training supervisor shall not be a family member.

(c) The credential requirement of this subsection applies to the work setting supervisor and not to a practicum coordinator or instructor of a postsecondary educational institution.

(2) The practical training supervisor shall assume responsibility for the performance of the individual in training and shall be onsite at the work setting when core function activities are performed by the individual in training. A minimum of one hour of evaluative face-to-face supervision for each ten hours of core function performance shall be documented. Supervisory methods shall include, as a minimum, individual supervisory sessions, formal case staffings, and conjoint, cotherapy sessions. Supervision shall be directed towards teaching the knowledge and skills of professional alcohol and drug counseling.

Source: Laws 2004, LB 1083, § 120; Laws 2005, LB 551, § 1; R.S.Supp.,2006, § 71-1,356; Laws 2007, LB463, § 166.
Operative date December 1, 2008.

38-316 Alcohol and drug counselor; license requirements. (1) To be licensed to practice as an alcohol and drug counselor, an applicant shall meet the requirements for licensure as a provisional alcohol and drug counselor under section 38-314, shall receive a passing score on an examination approved by the board, and shall have six thousand hours of supervised clinical work experience providing alcohol and drug counseling services to alcohol and other drug clients for remuneration. The experience shall be polydrug counseling experience.

(2) The experience shall include carrying a client caseload as the primary alcohol and drug counselor performing the core functions of assessment, treatment planning, counseling, case management, referral, reports and record keeping, and consultation with other professionals for those clients. The experience shall also include responsibility for performance of the five remaining core functions although these core functions need not be performed by the applicant with each client in their caseload.

(3) Experience that shall not count towards licensure shall include, but not be limited to:

(a) Providing services to individuals who do not have a diagnosis of alcohol and drug abuse or dependence such as prevention, intervention, and codependency services or other mental health disorder counseling services, except that this shall not exclude counseling services provided to a client's significant others when provided in the context of treatment for the diagnosed alcohol or drug client; and

(b) Providing services when the experience does not include primary case responsibility for alcohol or drug treatment or does not include responsibility for the performance of all of the core functions.

(4) The maximum number of hours of experience that may be accrued are forty hours per week or two thousand hours per year.

(5)(a) A postsecondary educational degree may be substituted for part of the supervised clinical work experience. The degree shall be from a regionally accredited postsecondary educational institution or the educational program shall be accredited by a nationally recognized accreditation agency.

(b) An associate's degree in addictions or chemical dependency may be substituted for one thousand hours of supervised clinical work experience.

(c) A bachelor's degree with a major in counseling, addictions, social work, sociology, or psychology may be substituted for two thousand hours of supervised clinical work experience.

(d) A master's degree or higher in counseling, addictions, social work, sociology, or psychology may be substituted for four thousand hours of supervised clinical work experience.

(e) A substitution shall not be made for more than one degree.

Source: Laws 2004, LB 1083, § 121; R.S.Supp.,2006, § 71-1,357; Laws 2007, LB463, § 167. Operative date December 1, 2008.

38-317 Clinical supervisor; requirements; duties. (1)(a) The clinical supervisor for supervised clinical work experience under section 38-316 shall hold one of the following credentials:

(i) Licensure as an alcohol and drug counselor;

(ii) If the clinical work is acquired outside of Nebraska, a reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor;

(iii) The highest level alcohol and drug counselor credential issued by a jurisdiction that is not a member of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc., or its successor if the credential is based on education, experience, and examination that is substantially similar to the license issued in this state as determined by the board; or

(iv) Licensure as a physician or psychologist under the Uniform Credentialing Act, or an equivalent credential from another jurisdiction, and sufficient training as determined by the Board of Medicine and Surgery for physicians or the Board of Psychologists for psychologists, in consultation with the Board of Alcohol and Drug Counseling, and adopted and promulgated by the department in rules and regulations.

(b) The clinical supervisor shall be formally affiliated with the program or agency in which the work experience is gained.

(c) The clinical supervisor shall not be a family member.

(2) There shall be one hour of evaluative face-to-face clinical supervision for each forty hours of paid alcohol and drug counseling work experience. The format for supervision shall be either one-on-one or small group. Methods of supervision may include case review and discussion or direct observation of a counselor's clinical work.

Source: Laws 2004, LB 1083, § 122; Laws 2005, LB 551, § 2; R.S.Supp.,2006, § 71-1,358; Laws 2007, LB463, § 168.
Operative date December 1, 2008.

38-318 Licensure; substitute requirements. (1) An individual who is licensed as a provisional alcohol and drug counselor at the time of application for licensure as an alcohol and drug counselor is deemed to have met the requirements of a high school diploma or its equivalent, the two hundred seventy hours of education related to alcohol and drug counseling, and the supervised practical training requirement.

(2) An applicant who is licensed as a provisional mental health practitioner or a mental health practitioner at the time of application for licensure is deemed to have met the requirements of subdivisions (2)(a), (b), (c), (d), and (f) of section 38-314.

Source: Laws 2004, LB 1083, § 123; R.S.Supp.,2006, § 71-1,359; Laws 2007, LB463, § 169.
Operative date December 1, 2008.

38-319. Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Alcohol and Drug Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 170.
Operative date December 1, 2008.

38-320 Fees. The department shall establish and collect fees for initial licensure and renewal under the Alcohol and Drug Counseling Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 171.
Operative date December 1, 2008.

38-321 Rules and regulations. (1) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to administer the Alcohol and Drug Counseling Practice Act, including rules and regulations governing:

(a) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(b) The rights of persons receiving alcohol and drug counseling;

(c) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would pose a threat to another person, unless the release of the records is required by court order;

(d) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(e) Standards of professional conduct and a code of ethics.

(2) The rules and regulations governing certified alcohol and drug counselors shall remain in effect to govern licensure until modified under this section, except that if there is any conflict with the Alcohol and Drug Counseling Practice Act, the provisions of the act shall prevail.

Source: Laws 2004, LB 1083, § 125; R.S.Supp.,2006, § 71-1,361; Laws 2007, LB463, § 172.
Operative date December 1, 2008.

ARTICLE 4

ATHLETIC TRAINING PRACTICE ACT

Section.

38-401 Act, how cited. Sections 38-401 to 38-414 shall be known and may be cited as the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 173.
Operative date December 1, 2008.

38-402 Definitions, where found. For purposes of the Athletic Training Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-403 to 38-407 apply.

Source: Laws 1986, LB 355, § 1; Laws 1996, LB 1044, § 477; Laws 1999, LB 178, § 2; Laws 1999, LB 828, § 140; Laws 2003, LB 242, § 65; R.S.1943, (2003), § 71-1,238; Laws 2007, LB296, § 359; Laws 2007, LB463, § 174.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 359, with LB 463, section 174, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-403 Athletic injuries, defined. Athletic injuries means the types of musculoskeletal injury or common illness and conditions which athletic trainers are educated to treat or refer, incurred by athletes, which prevent or limit participation in sports or recreation.

Source: Laws 2007, LB463, § 175.
Operative date December 1, 2008.

38-404 Athletic trainer, defined. Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 38-408. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-408 with a referral from a licensed physician for athletic training.

Source: Laws 2007, LB463, § 176.
Operative date December 1, 2008.

38-405 Athletic training, defined. Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 38-408.

Source: Laws 2007, LB463, § 177.
Operative date December 1, 2008.

38-406 Board, defined. Board means the Board of Athletic Training.

Source: Laws 2007, LB463, § 178.
Operative date December 1, 2008.

38-407 Practice site, defined. Practice site means the location where the athletic trainer practices athletic training.

Source: Laws 2007, LB463, § 179.
Operative date December 1, 2008.

38-408 Athletic trainers; authorized physical modalities. (1) Athletic trainers shall be authorized to use the following physical modalities in the treatment of athletic injuries under guidelines established with a licensed physician:

(a) Application of electrotherapy;

(b) Application of ultrasound;

(c) Use of medical diathermies;

(d) Application of infrared light; and

(e) Application of ultraviolet light.

(2) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 180.
Operative date December 1, 2008.

38-409 License required; exceptions. No person shall be authorized to perform the physical modalities set out in section 38-408 on any person unless he or she first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out to be an athletic trainer unless licensed under the Athletic Training Practice Act.

Source: Laws 1986, LB 355, § 3; Laws 1989, LB 342, § 27; Laws 1999, LB 178, § 3; Laws 2003, LB 242, § 67; R.S.1943, (2003), § 71-1,240; Laws 2007, LB463, § 181.
Operative date December 1, 2008.

38-410 Licensure requirements; exemptions. (1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

(2) An individual who is a graduate student in athletic training and who is practicing under the supervision of a licensed athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

Source: Laws 1999, LB 178, § 4; Laws 2003, LB 242, § 66; R.S.1943, (2003), § 71-1,239.01; Laws 2007, LB463, § 182.
Operative date December 1, 2008.

38-411 Applicant for licensure; qualifications; examination. (1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:

(a) Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or

(b) Graduation with a four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as a student athletic trainer under the supervision of an athletic trainer approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Source: Laws 1986, LB 355, § 4; R.S.1943, (2003), § 71-1,241; Laws 2007, LB463, § 183.
Operative date December 1, 2008.

38-412 Continuing competency requirements. An applicant for licensure as an athletic trainer who has met the education and examination requirements in section 38-411, 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, § 184.
Operative date December 1, 2008.

38-413 Reciprocity; continuing competency requirements. An applicant for licensure as an athletic trainer 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, § 185.
Operative date December 1, 2008.

38-414 Fees. The department shall establish and collect fees for initial licensure and renewal under the Athletic Training Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 186.
Operative date December 1, 2008.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section.

38-501 Act, how cited. Sections 38-501 to 38-527 shall be known and may be cited as the Audiology and Speech-Language Pathology Practice Act.

Source: Laws 2007, LB247, § 63; Laws 2007, LB463, § 187.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 187, and was amended by Laws 2007, LB 247, section 63.

38-502 Definitions, where found. For purposes of the Audiology and Speech-Language Pathology Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-503 to 38-509 apply.

Source: Laws 1978, LB 406, § 13; Laws 1985, LB 129, § 14; Laws 1988, LB 1100, § 66; Laws 1999, LB 828, § 130; R.S.1943, (2003), § 71-1,186; Laws 2007, LB247, § 27; Laws 2007, LB247, § 64; Laws 2007, LB463, § 188.

Note: The changes made by LB 247, section 27, became operative June 1, 2007. The changes made by LB 247, section 64, and LB 463 became operative December 1, 2008.

38-503 Audiologist, defined. Audiologist means an individual who practices audiology and who presents himself or herself to the public by any title or description of services incorporating the words audiologist, hearing clinician, or hearing therapist or any similar title or description of services.

Source: Laws 2007, LB463, § 189.
Operative date December 1, 2008.

38-504 Board, defined. Board means the Board of Audiology and Speech-Language Pathology.

Source: Laws 2007, LB463, § 190.
Operative date December 1, 2008.

38-505 Audiology or speech-language pathology assistant, defined. Audiology or speech-language pathology assistant or any individual who presents himself or herself to the public by any title or description with the same duties means any person who, following specified training and receiving specified supervision, provides specified limited structured communication or swallowing services, which are developed and supervised by a licensed audiologist or licensed speech-language pathologist, in the areas in which the supervisor holds licenses.

Source: Laws 2007, LB247, § 65; Laws 2007, LB463, § 191.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 191, and was amended by Laws 2007, LB 247, section 65.

38-506 Dysphagia, defined. Dysphagia means disorders of swallowing.

Source: Laws 2007, LB247, § 66.
Operative date December 1, 2008.

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 aids, external processors of implantable hearing aids, 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.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 192, and was amended by Laws 2007, LB 247, section 67.

38-508 Practice of speech-language pathology, defined. Practice of speech-language pathology means the application of principles and methods associated with the development and disorders of human communication skills and with dysphagia, which principles and methods include screening, assessment, evaluation, treatment, prevention, consultation, and restorative modalities for speech, voice, language, language-based learning, hearing,

swallowing, or other upper aerodigestive functions for the purpose of improving quality of life by reducing impairments of body functions and structures, activity limitations, participation restrictions, and environmental barriers. Practice of speech-language pathology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 68; Laws 2007, LB463, § 193.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 193, and was amended by Laws 2007, LB 247, section 68.

38-509 Speech-language pathologist, defined. Speech-language pathologist means an individual who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatrist, or any similar title, term, or description of services.

Source: Laws 2007, LB463, § 194.
Operative date December 1, 2008.

38-510 Membership on board; qualifications. Membership on the board shall consist of four 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. Two of the professional members shall be audiologists, and two of the professional members shall be speech-language pathologists.

Source: Laws 2007, LB463, § 195.
Operative date December 1, 2008.

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 aid fitter and dealer in this state from engaging in the fitting, selling, and servicing of hearing aids or performing such other duties as defined in the Hearing Aid Instrument Dispensers and Fitters 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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 28, with LB 463, section 196, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference
Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.

38-512 Sale of hearing aids; audiologist; applicability of act. Any audiologist who engages in the sale of hearing aids shall not be exempt from the Hearing Aid Instrument Dispensers and Fitters Practice Act.

Source: Laws 1978, LB 406, § 23; R.S.1943, (2003), § 71-1,196; Laws 2007, LB463, § 197. Operative date December 1, 2008.

Cross Reference
Hearing Aid Instrument Dispensers and Fitters Practice Act, see section 38-1501.

38-513 Licensed professional; nonresident; 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) a qualified person licensed in this state from engaging in the profession for which he or she is licensed if he or she does not present himself or herself to be an audiologist or speech-language pathologist or (2) the performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed under the act, if such services are performed for not more than thirty days in any calendar year, if such person meets the qualifications and requirements for application for licensure under the act, if such person is working under the supervision of a person licensed to practice speech-language pathology or audiology, and if such person registers with the board prior to initiation of professional services.

Source: Laws 1978, LB 406, § 15; Laws 1985, LB 129, § 16; Laws 1990, LB 828, § 2; R.S.1943, (2003), § 71-1,188; Laws 2007, LB463, § 198.
Operative date December 1, 2008.

38-514 Audiologist; initiate aural rehabilitation; when. Before any audiologist initiates any aural rehabilitation for an individual, the audiologist shall have in his or her possession evidence of a current otologic examination performed by a physician or the audiologist shall issue a written statement that the individual has been informed that he or she may have a medically or surgically remediable hearing loss and should seek the advice of a physician. The audiologist and the individual receiving aural rehabilitation shall sign the statement and a copy of the statement shall be provided to the individual. All vestibular testing performed by an audiologist shall be done at the referral of a physician and, whenever possible, at the referral of an otolaryngologist or neurologist.

Source: Laws 1978, LB 406, § 16; Laws 1985, LB 129, § 17; R.S.1943, (2003), § 71-1,189; Laws 2007, LB463, § 199.
Operative date December 1, 2008.

38-515 Practice of audiology or speech-language pathology; license; applicant; requirements. (1) Every applicant for a license to practice audiology shall (a)(i) for applicants graduating prior to September 1, 2007, present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in audiology from an academic program approved by the board, and (ii) for applicants graduating on or after September 1, 2007, present proof of a doctoral degree or its equivalent in audiology, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in audiology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(2) Every applicant for a license to practice speech-language pathology shall (a) present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in speech-language pathology from an academic program approved by the board, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in speech-language pathology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(3) Presentation of official documentation of certification by a nationwide professional accrediting organization approved by the board shall be deemed equivalent to the requirements of this section.

Source: Laws 1978, LB 406, § 17; Laws 1985, LB 129, § 18; Laws 1988, LB 1100, § 67; R.S.1943, (2003), § 71-1,190; Laws 2007, LB463, § 200; Laws 2007, LB463, § 1178.

Note: The changes made by LB 463, section 1178, became operative September 1, 2007. The changes made by LB 463, section 200, became operative December 1, 2008.

38-516 Continuing competency requirements. An applicant for licensure to practice audiology or speech-language pathology who has met the education, professional experience,

and examination requirements in section 38-515, 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, § 201.
Operative date December 1, 2008.

38-517 Reciprocity; continuing competency requirements. An applicant for licensure to practice audiology or speech-language pathology 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, § 202.
Operative date December 1, 2008.

38-518 Practice of audiology or speech-language pathology; temporary license; granted; when. A temporary license to practice audiology or speech-language pathology may be granted to persons who establish residence in Nebraska and (1) who meet all the requirements for a license except passage of the examination required by section 38-515, which temporary license shall be valid only until the date on which the results of the next licensure examination are available to the department and shall not be renewed, or (2) who meet all the requirements for a license except completion of the professional experience required by section 38-515, which temporary license shall be valid only until the sooner of completion of such professional experience or eighteen months and shall not be renewed.

Source: Laws 1978, LB 406, § 21; Laws 1985, LB 129, § 22; Laws 1988, LB 1100, § 68; Laws 1991, LB 456, § 28; Laws 2001, LB 209, § 12; Laws 2003, LB 242, § 59; R.S.1943, (2003), § 71-1,194; Laws 2007, LB463, § 203.
Operative date December 1, 2008.

38-519 Audiology or speech-language pathology assistant; registration; requirements. (1) Upon application and payment of the registration fee, the department shall register to practice as an audiology or speech-language pathology assistant any person who:

(a)(i) Holds a bachelor's degree or its equivalent in communication disorders, (ii) holds an associate degree or its equivalent in communication disorders from an accredited training program, or (iii) between the period of June 1, 2005, and June 1, 2007, was registered as and practiced as a communication assistant for at least thirty hours per week for a minimum of nine months per year;

(b) Has successfully completed all required training pursuant to sections 38-521 and 38-522 and any inservice training required pursuant to section 38-526; and

(c) Has demonstrated ability to reliably maintain records and provide treatment under the supervision of a licensed audiologist or speech-language pathologist.

(2) Such registration shall be valid for one year from the date of issuance.

Source: Laws 1985, LB 129, § 23; Laws 1988, LB 1100, § 69; Laws 2002, LB 1021, § 27; Laws 2003, LB 242, § 60; R.S.1943, (2003), § 71-1,195.01; Laws 2007, LB247, § 29; Laws 2007, LB463, § 204.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 29, with LB 463, section 204, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-520 Audiologist or speech-language pathology assistant; supervision; termination. (1) The department, with the recommendation of the board, shall approve an application submitted by an audiologist or speech-language pathologist for supervision of an audiology or speech-language pathology assistant when:

(a) The audiology or speech-language pathology assistant meets the requirements for registration pursuant to section 38-519;

(b) The audiologist or speech-language pathologist has a valid Nebraska license; and

(c) The audiologist or speech-language pathologist practices in Nebraska.

(2) Any audiologist or speech-language pathologist seeking approval for supervision of an audiology or speech-language pathology assistant shall submit an application which is signed by the audiology or speech-language pathology assistant and the audiologist or speech-language pathologist with whom he or she is associated. Such application shall (a) identify the settings within which the audiology or speech-language pathology assistant is authorized to practice, (b) describe the agreed-upon functions that the audiology or speech-language pathology assistant may perform as provided in section 38-523, and (c) describe the provision for supervision by an alternate audiologist or speech-language pathologist when necessary.

(3) If the supervision of an audiology or speech-language pathology assistant is terminated by the audiologist, speech-language pathologist, or audiology or speech-language pathology assistant, the audiologist or speech-language pathologist shall notify the department of such termination. An audiologist or speech-language pathologist who thereafter assumes the responsibility for such supervision shall obtain a certificate of approval to supervise an audiology or speech-language pathology assistant from the department prior to the use of the audiology or speech-language pathology assistant in the practice of audiology or speech-language pathology.

Source: Laws 1985, LB 129, § 24; Laws 1987, LB 473, § 30; Laws 1988, LB 1100, § 70; R.S.1943, (2003), § 71-1,195.02; Laws 2007, LB247, § 30; Laws 2007, LB463, § 205.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 30, with LB 463, section 205, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-521 Audiology or speech-language pathology assistant; initial training. Initial training for an audiology or speech-language pathology assistant shall consist of graduation from an accredited program with a focus on communication disorders which shall include:

(1) An overview of speech, language, and dysphagia and the practice of audiology and speech-language pathology;

(2) Ethical and legal responsibilities;

(3) Normal language, speech, and hearing functions and swallowing physiology;

(4) Observing and recording patient progress;

(5) Behavior management and modification; and

(6) Record keeping.

Source: Laws 1985, LB 129, § 26; Laws 1988, LB 1100, § 72; R.S.1943, (2003), § 71-1,195.04; Laws 2007, LB247, § 32; Laws 2007, LB463, § 206.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 32, with LB 463, section 206, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-522 Audiology or speech-language pathology assistant; aural rehabilitation programs; training. In addition to the initial training required by section 38-521, an audiology or speech-language pathology assistant assigned to provide aural rehabilitation programs shall have additional training which shall include, but not be limited to:

(1) Information concerning the nature of hearing loss;

(2) Purposes and principles of auditory and visual training;

(3) Maintenance and use of amplification devices; and

(4) Such other subjects as the department may deem appropriate.

Source: Laws 1985, LB 129, § 27; Laws 1988, LB 1100, § 73; R.S.1943, (2003), § 71-1,195.05; Laws 2007, LB247, § 33; Laws 2007, LB463, § 207.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 33, with LB 463, section 207, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-523 Audiology or speech-language assistant; duties and activities. An audiology or speech-language pathology assistant may, under the supervision of a licensed audiologist or speech-language pathologist, perform the following duties and activities:

(1) Implement programs and procedures designed by a licensed audiologist or speech-language pathologist;

(2) Maintain records of implemented procedures which document a patient's responses to treatment;

(3) Provide input for interdisciplinary treatment planning, inservice training, and other activities directed by a licensed audiologist or speech-language pathologist;

(4) Prepare instructional material to facilitate program implementation as directed by a licensed audiologist or speech-language pathologist;

(5) Follow plans, developed by the licensed audiologist or speech-language pathologist, that provide specific sequences of treatment to individuals with communicative disorders or dysphagia; and

(6) Chart or log patient responses to the treatment plan.

Source: Laws 1985, LB 129, § 28; Laws 1988, LB 1100, § 74; R.S.1943, (2003), § 71-1,195.06; Laws 2007, LB247, § 34; Laws 2007, LB463, § 208.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 34, with LB 463, section 208, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

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 aids.

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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 35, with LB 463, section 209, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-525 Audiology or speech-language pathology assistant; supervisor; duties. (1) When supervising an audiology or speech-language pathology assistant, the supervising audiologist or speech-language pathologist shall:

(a) Provide supervision for no more than two audiology or speech-language pathology assistants at one time;

(b) Provide direct onsite supervision for the first two treatment sessions of each patient's care;

(c) Provide direct onsite supervision of at least twenty percent of all subsequent treatment sessions per quarter;

(d) Provide at least ten hours of inservice training per registration period, either formal or informal, which is directly related to the particular services provided by the audiology or speech-language pathology assistant; and

(e) Prepare semiannual performance evaluations of the audiology or speech-language pathology assistant to be reviewed with the audiology or speech-language pathology assistant on a one-to-one basis.

(2) The supervising audiologist or speech-language pathologist shall be responsible for all aspects of patient treatment.

Source: Laws 1985, LB 129, § 30; Laws 1988, LB 1100, § 76; R.S.1943, (2003), § 71-1,195.08; Laws 2007, LB247, § 36; Laws 2007, LB463, § 210.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 36, with LB 463, section 210, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-526 Audiology or speech-language pathology assistant; evaluation, supervision, training; supervisor; report required. The supervising audiologist or speech-language pathologist shall provide annual reports to the department verifying that evaluation, supervision, and training required by section 38-525 has been completed. The audiologist or speech-language pathologist shall keep accurate records of such evaluation, supervision, and training.

Source: Laws 1985, LB 129, § 31; Laws 1988, LB 1100, § 77; R.S.1943, (2003), § 71-1,195.09; Laws 2007, LB247, § 37; Laws 2007, LB247, § 69; Laws 2007, LB463, § 211.

Note: The changes made by LB 247, section 37, became operative June 1, 2007. The changes made by LB 247, section 69, and LB 463 became operative December 1, 2008.

38-527 Fees. The department shall establish and collect fees for initial licensure and registration and renewal of licensure and registration under the Audiology and Speech-Language Pathology Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 212.
Operative date December 1, 2008.

ARTICLE 6

CERTIFIED NURSE MIDWIFERY PRACTICE ACT

Section.

38-601 Act, how cited. Sections 38-601 to 38-618 shall be known and may be cited as the Certified Nurse Midwifery Practice Act.

Source: Laws 1984, LB 761, § 1; Laws 2005, LB 256, § 82; R.S.Supp.,2006, § 71-1738; Laws 2007, LB463, § 213.
Operative date December 1, 2008.

38-602 Legislative findings. The Legislature hereby finds and declares that the Certified Nurse Midwifery Practice Act is necessary to safeguard public life, health, safety, and welfare, to assure the highest degree of professional conduct by practitioners of certified nurse midwifery, and to insure the availability of high quality midwifery services to persons desiring such services.

Source: Laws 1984, LB 761, § 2; R.S.1943, (2003), § 71-1739; Laws 2007, LB463, § 214.
Operative date December 1, 2008.

38-603 Definitions, where found. For purposes of the Certified Nurse Midwifery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-604 to 38-610 apply.

Source: Laws 1984, LB 761, § 3; Laws 1999, LB 828, § 160; R.S.1943, (2003), § 71-1740; Laws 2007, LB463, § 215.
Operative date December 1, 2008.

38-604 Approved certified nurse midwifery education program, defined. Approved certified nurse midwifery education program means a certified nurse midwifery education program approved by the board. The board may require such program to be accredited by the American College of Nurse-Midwives.

Source: Laws 1984, LB 761, § 12; Laws 2005, LB 256, § 85; R.S.Supp.,2006, § 71-1749; Laws 2007, LB185, § 21; Laws 2007, LB463, § 216.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-605 Board, defined. Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 1984, LB 761, § 6; Laws 1993, LB 536, § 74; Laws 1999, LB 828, § 161; Laws 2005, LB 256, § 83; R.S.Supp.,2006, § 71-1743; Laws 2007, LB463, § 217.
Operative date December 1, 2008.

38-606 Certified nurse midwife, defined. Certified nurse midwife means a person certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Practice Act to practice certified nurse midwifery in the State of Nebraska. Nothing in the Certified Nurse Midwifery Practice Act is intended to restrict the practice of registered nurses.

Source: Laws 1984, LB 761, § 11; R.S.1943, (2003), § 71-1748; Laws 2007, LB185, § 20; Laws 2007, LB463, § 218.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-607 Collaboration, defined. Collaboration means a process and relationship in which a certified nurse midwife works together with other health professionals to deliver health care within the scope of practice of certified nurse midwifery as provided in the Certified Nurse Midwifery Practice Act. The collaborative relationship between the physician and the nurse midwife shall be subject to the control and regulation of the board.

Source: Laws 1984, LB 761, § 10; Laws 2005, LB 256, § 84; R.S.Supp.,2006, § 71-1747; Laws 2007, LB463, § 219.
Operative date December 1, 2008.

38-608 Licensed practitioner, defined. Licensed practitioner means any physician licensed to practice pursuant to the Medicine and Surgery Practice Act, whose practice includes obstetrics.

Source: Laws 1984, LB 761, § 9; R.S.1943, (2003), § 71-1746; Laws 2007, LB463, § 220.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

38-609 Practice agreement, defined. Practice agreement means the written agreement authored and signed by the certified nurse midwife and the licensed practitioner with whom he or she is associated which:

(1) Identifies the settings within which the certified nurse midwife is authorized to practice;

(2) Names the collaborating licensed practitioner or, if more than one licensed practitioner is a party to such practice agreement, names all of the collaborating licensed practitioners;

(3) Defines or describes the medical functions to be performed by the certified nurse midwife, which are not inconsistent with the Certified Nurse Midwifery Practice Act, as agreed to by the nurse midwife and the collaborating licensed practitioner; and

(4) Contains such other information as required by the board.

Source: Laws 1984, LB 761, § 13; Laws 2005, LB 256, § 86; R.S.Supp.,2006, § 71-1750; Laws 2007, LB463, § 221.
Operative date December 1, 2008.

38-610 Supervision, defined. Supervision means the ready availability of a collaborating licensed practitioner for consultation and direction of the activities of the certified nurse midwife related to delegated medical functions as outlined in the practice agreement.

Source: Laws 1984, LB 761, § 14; R.S.1943, (2003), § 71-1751; Laws 2007, LB463, § 222.
Operative date December 1, 2008.

38-611 Certified nurse midwife; authorized activities. A certified nurse midwife may, under the provisions of a practice agreement, (1) attend cases of normal childbirth, (2) provide prenatal, intrapartum, and postpartum care, (3) provide normal obstetrical and gynecological services for women, and (4) provide care for the newborn immediately following birth. The conditions under which a certified nurse midwife is required to refer cases to a collaborating licensed practitioner shall be specified in the practice agreement.

Source: Laws 1984, LB 761, § 15; R.S.1943, (2003), § 71-1752; Laws 2007, LB185, § 22; Laws 2007, LB463, § 223.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-612 Unlicensed person; acts not prohibited. The Certified Nurse Midwifery Practice Act shall not prohibit the performance of the functions of a certified nurse midwife by an unlicensed person if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state; or

(3) By a person enrolled in an approved program for the preparation of certified nurse midwives as part of such approved program.

Source: Laws 1984, LB 761, § 28; R.S.1943, (2003), § 71-1765; Laws 2007, LB185, § 27; Laws 2007, LB463, § 224.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-613 Permitted practice described in practice agreement; supervision; settings; subject to review by board; rules and regulations. (1) The specific medical functions to be performed by a certified nurse midwife within the scope of permitted practice prescribed by section 38-611 shall be described in the practice agreement which shall be reviewed and approved by the board. A copy of the agreement shall be maintained on file with the board as a condition of lawful practice under the Certified Nurse Midwifery Practice Act.

(2) A certified nurse midwife shall perform the functions detailed in the practice agreement only under the supervision of the licensed practitioner responsible for the medical care of the patients described in the practice agreement. If the collaborating licensed practitioner named in the practice agreement becomes temporarily unavailable, the certified nurse midwife may perform the authorized medical functions only under the supervision of another licensed practitioner designated as a temporary substitute for that purpose by the collaborating licensed practitioner.

(3) A certified nurse midwife may perform authorized medical functions only in the following settings:

(a) In a licensed or certified health care facility as an employee or as a person granted privileges by the facility;

(b) In the primary office of a licensed practitioner or in any setting authorized by the collaborating licensed practitioner, except that a certified nurse midwife shall not attend a home delivery; or

(c) Within an organized public health agency.

(4) The department shall, after consultations with the board, adopt and promulgate rules and regulations to carry out the Certified Nurse Midwifery Practice Act.

Source: Laws 1984, LB 761, § 16; Laws 1993, LB 536, § 75; Laws 2005, LB 256, § 87; R.S.Supp.,2006, § 71-1753; Laws 2007, LB463, § 225.
Operative date December 1, 2008.

38-614 Change in practice; new or amended agreement. If a certified nurse midwife intends to alter his or her practice status by reason of a change in the setting, supervision by a different licensed practitioner, modification of the authorized medical functions, or for any other reason, he or she shall submit a new or amended practice agreement to the board for approval before any change may be permitted.

Source: Laws 1984, LB 761, § 17; Laws 2005, LB 256, § 88; R.S.Supp.,2006, § 71-1754; Laws 2007, LB463, § 226.
Operative date December 1, 2008.

38-615 Licensure as nurse midwife; application; requirements; temporary licensure. (1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a certified nurse midwife shall submit such evidence as the board requires showing that the applicant is currently licensed as a registered nurse by the state or has the authority based on the Nurse Licensure Compact to practice as a registered nurse

in Nebraska, has successfully completed an approved certified nurse midwifery education program, and is certified as a nurse midwife by a board-approved certifying body.

(2) The department may, with the approval of the board, grant temporary licensure as a certified nurse midwife for up to one hundred twenty days upon application (a) to graduates of an approved nurse midwifery program pending results of the first certifying examination following graduation and (b) to nurse midwives currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board.

(3) An individual holding a temporary certificate or permit as a nurse midwife on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The holder of such temporary certificate or permit may continue to practice under such certificate or permit as a temporary license until it would have expired under its terms.

(4) If more than five years have elapsed since the completion of the nurse midwifery program or since the applicant has practiced as a nurse midwife, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency, as may be determined by the board, either by means of a reentry program, references, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1984, LB 761, § 18; Laws 1993, LB 536, § 76; Laws 1997, LB 752, § 175; Laws 2002, LB 1021, § 63; Laws 2003, LB 242, § 107; Laws 2005, LB 256, § 89; R.S.Supp.,2006, § 71-1755; Laws 2007, LB185, § 23; Laws 2007, LB463, § 227.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Nurse Licensure Compact, see section 71-1795.

38-616 License; renewal. To renew a license as a certified nurse midwife, the applicant shall have a current certification by a board-approved certifying body to practice nurse midwifery.

Source: Laws 1984, LB 761, § 20; Laws 1986, LB 926, § 57; Laws 1993, LB 536, § 77; Laws 1994, LB 1223, § 42; Laws 2002, LB 1021, § 64; Laws 2002, LB 1062, § 48; Laws 2003, LB 242, § 108; Laws 2005, LB 256, § 90; R.S.Supp.,2006, § 71-1757; Laws 2007, LB185, § 25; Laws 2007, LB463, § 228.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-617 Certified nurse midwife; right to use title or abbreviation. Any person who holds a license to practice nurse midwifery in this state shall have the right to use the title certified nurse midwife and the abbreviation CNM. No other person shall use such title or abbreviation to indicate that he or she is licensed under the Advanced Practice Registered Nurse Practice Act to practice certified nurse midwifery.

Source: Laws 1984, LB 761, § 19; R.S.1943, (2003), § 71-1756; Laws 2007, LB185, § 24; Laws 2007, LB463, § 229.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-618 Act, how interpreted. Nothing in the Certified Nurse Midwifery Practice Act shall be interpreted to permit independent practice.

Source: Laws 1984, LB 761, § 26; R.S.1943, (2003), § 71-1763; Laws 2007, LB463, § 230.
Operative date December 1, 2008.

ARTICLE 7

CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT

Section.

38-701 Act, how cited. Sections 38-701 to 38-711 shall be known and may be cited as the Certified Registered Nurse Anesthetist Practice Act.

Source: Laws 2005, LB 256, § 73; R.S.Supp.,2006, § 71-1728; Laws 2007, LB463, § 231.
Operative date December 1, 2008.

38-702 Definitions, where found. For purposes of the Certified Registered Nurse Anesthetist Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-703 to 38-706 apply.

Source: Laws 2007, LB463, § 232.
Operative date December 1, 2008.

38-703 Board, defined. Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 233.
Operative date December 1, 2008.

38-704 Certified registered nurse anesthetist, defined. Certified registered nurse anesthetist means a licensed registered nurse certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a certified registered nurse anesthetist in the State of Nebraska.

Source: Laws 2007, LB463, § 234.
Operative date December 1, 2008.

Cross Reference
Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-705 Licensed practitioner, defined. Licensed practitioner means any physician or osteopathic physician licensed to prescribe, diagnose, and treat as prescribed in the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 235.
Operative date December 1, 2008.

Cross Reference
Medicine and Surgery Practice Act, see section 38-2001.

38-706 Practice of anesthesia, defined; activities not subject to act. (1) Practice of anesthesia means (a) the performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for procedures requiring the presence of persons educated in the administration of anesthetics or (b) the performance of any act commonly the responsibility of educated anesthesia personnel. Practice of anesthesia includes the use of those techniques which are deemed necessary for adequacy in performance of anesthesia administration.

(2) Nothing in the Certified Registered Nurse Anesthetist Practice Act prohibits (a) routine administration of a drug by a duly licensed registered nurse, licensed practical nurse, or other duly authorized person for the alleviation of pain or (b) the practice of anesthesia by students enrolled in an accredited school of nurse anesthesia when the services performed are a part of the course of study and are under the supervision of a licensed practitioner or certified registered nurse anesthetist.

Source: Laws 1981, LB 379, § 26; Laws 1992, LB 1019, § 73; Laws 2002, LB 1062, § 47; Laws 2005, LB 256, § 74; R.S.Supp.,2006, § 71-1729; Laws 2007, LB185, § 14; Laws 2007, LB296, § 485; Laws 2007, LB463, § 236.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 14, with LB 296, section 485, and LB 463, section 236, to reflect all amendments.
Note: The changes made by LB 185 and LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-707 Certified registered nurse anesthetist; license; requirements. (1) An applicant for a license under the Advanced Practice Registered Nurse Practice Act to practice as a certified registered nurse anesthetist shall:

(a) Hold a license as a registered nurse in the State of Nebraska or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Submit evidence of successful completion of a course of study in anesthesia in a school of nurse anesthesia accredited or approved by or under the auspices of the department or the Council on Accreditation of Nurse Anesthesia and Educational Programs; and

(c) Submit evidence of current certification by the Council on Certification of Nurse Anesthetists.

(2) If more than five years have elapsed since the applicant completed the nurse anesthetist program or since the applicant has practiced as a nurse anesthetist, he or she shall meet the requirements of subsection (1) of this section and shall provide evidence of continuing competency as determined by the board, including, but not limited to, a reentry program, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1981, LB 379, § 27; Laws 1984, LB 724, § 29; Laws 1992, LB 1019, § 74; Laws 1996, LB 414, § 44; Laws 1997, LB 752, § 174; Laws 1999, LB 828, § 155; Laws 2002, LB 1021, § 61; Laws 2003, LB 242, § 105; Laws 2005, LB 256, § 78; R.S.Supp.,2006, § 71-1730; Laws 2007, LB185, § 15; Laws 2007, LB463, § 237.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Nurse Licensure Compact, see section 71-1795.

38-708 Certified registered nurse anesthetist; temporary license; permit. The department may, with the approval of the board, grant a temporary license in the practice of anesthesia for up to one hundred twenty days upon application (1) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (2) to registered nurse anesthetists currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended at the discretion of the board with the approval of the department. An individual holding a temporary permit as a registered nurse anesthetist on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1981, LB 379, § 28; Laws 1984, LB 724, § 30; Laws 1992, LB 1019, § 75; Laws 1996, LB 414, § 45; Laws 1999, LB 828, § 156; Laws 2005, LB 256, § 79; R.S.Supp.,2006, § 71-1731; Laws 2007, LB185, § 16; Laws 2007, LB463, § 238.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-709 Certified registered nurse anesthetist; license; renewal. To renew a license to practice as a certified registered nurse anesthetist, the applicant shall have current certification by the Council on Certification of Nurse Anesthetists.

Source: Laws 1981, LB 379, § 32; Laws 1993, LB 536, § 73; Laws 1995, LB 563, § 42; Laws 1996, LB 414, § 46; Laws 1999, LB 828, § 157; Laws 2000, LB 1115, § 61; Laws 2002, LB 1021, § 62; Laws 2003, LB 242, § 106; Laws 2005, LB 256, § 80; R.S.Supp.,2006, § 71-1735; Laws 2007, LB185, § 18; Laws 2007, LB463, § 239.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-710 Use of title and abbreviation. A person licensed as a certified registered nurse anesthetist has the right to use the title certified registered nurse anesthetist and the abbreviation C.R.N.A.

Source: Laws 2007, LB463, § 240.
Operative date December 1, 2008.

38-711 Certified registered nurse anesthetist; performance of duties. (1) The determination and administration of total anesthesia care shall be performed by the certified registered nurse anesthetist or a nurse anesthetist temporarily licensed pursuant to section 38-708 in consultation and collaboration with and with the consent of the licensed practitioner.

(2) The following duties and functions shall be considered as specific expanded role functions of the certified registered nurse anesthetist:

(a) Preanesthesia evaluation including physiological studies to determine proper anesthetic management and obtaining informed consent;

(b) Selection and application of appropriate monitoring devices;

(c) Selection and administration of anesthetic techniques;

(d) Evaluation and direction of proper postanesthesia management and dismissal from postanesthesia care; and

(e) Evaluation and recording of postanesthesia course of patients.

(3) The determination of other duties that are normally considered medically delegated duties to the certified registered nurse anesthetist or to a nurse anesthetist temporarily licensed pursuant to section 38-708 shall be the joint responsibility of the governing board of the hospital, medical staff, and nurse anesthetist personnel of any duly licensed hospital or, if in an office or clinic, the joint responsibility of the duly licensed practitioner and nurse anesthetist. All such duties, except in cases of emergency, shall be in writing in the form prescribed by hospital or office policy.

Source: Laws 1981, LB 379, § 31; Laws 1992, LB 1019, § 76; R.S.1943, (2003), § 71-1734; Laws 2007, LB185, § 17; Laws 2007, LB463, § 241.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

ARTICLE 8

CHIROPRACTIC PRACTICE ACT

Section.

38-801 Act, how cited. Sections 38-801 to 38-811 shall be known and may be cited as the Chiropractic Practice Act.

Source: Laws 2007, LB463, § 242.
Operative date December 1, 2008.

38-802 Definitions, where found. For purposes of the Chiropractic Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-803 to 38-805 apply.

Source: Laws 2007, LB463, § 243.
Operative date December 1, 2008.

38-803 Accredited college of chiropractic, defined. An accredited college of chiropractic means (1) one which is approved by the board, (2) a legally chartered college of chiropractic requiring for admission a diploma from an accredited high school or its equivalent and, beginning with students entering a college of chiropractic on or after January 1, 1974, at least two years credit from an accredited college or university of this or some other state, which requirement shall be regularly published in each prospectus or catalog issued by such institution, (3) one which conducts a clinic for patients in which its students are required to regularly participate in the care and adjustment of patients, (4) one giving instruction in anatomy, orthopedics, physiology, embryology, chemistry, pathology, health ecology, bacteriology, symptomatology, histology, spinal analysis, diagnosis, roentgenology,

neurology, and principles and practice of chiropractic, and (5) one requiring an actual attendance for four college years totaling not less than four thousand hours.

Source: Laws 1927, c. 167, § 79, p. 475; C.S.1929, § 71-1104; R.S.1943, § 71-180; Laws 1945, c. 163, § 1, p. 528; Laws 1973, LB 115, § 1; Laws 1996, LB 1044, § 405; Laws 1999, LB 828, § 67; R.S.1943, (2003), § 71-180; Laws 2007, LB463, § 244.
Operative date December 1, 2008.

38-804 Board, defined. Board means the Board of Chiropractic.

Source: Laws 2007, LB463, § 245.
Operative date December 1, 2008.

38-805 Practice of chiropractic, defined. (1) Practice of chiropractic means one or a combination of the following, without the use of drugs or surgery:

(a) The diagnosis and analysis of the living human body for the purpose of detecting ailments, disorders, and disease by the use of diagnostic X-ray, physical and clinical examination, and routine procedures including urine analysis; or

(b) The science and art of treating human ailments, disorders, and disease by locating and removing any interference with the transmission and expression of nerve energy in the human body by chiropractic adjustment, chiropractic physiotherapy, and the use of exercise, nutrition, dietary guidance, and colonic irrigation.

(2) The use of X-rays beyond the axial skeleton as described in subdivision (1)(a) of this section shall be solely for diagnostic purposes and shall not expand the practice of chiropractic to include the treatment of human ailments, disorders, and disease not permitted when the use of X-rays was limited to the axial skeleton.

Source: Laws 1927, c. 167, § 76, p. 474; C.S.1929, § 71-1101; R.S.1943, § 71-177; Laws 1983, LB 142, § 1; Laws 1990, LB 348, § 1; R.S.1943, (2003), § 71-177; Laws 2007, LB463, § 246.
Operative date December 1, 2008.

38-806 Chiropractic practice; persons excepted. The Chiropractic Practice Act shall not be construed to include the following classes of persons:

(1) Licensed physicians and surgeons and licensed osteopathic physicians who are exclusively engaged in the practice of their respective professions;

(2) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) Chiropractors licensed in another state when incidentally called into this state in consultation with a chiropractor licensed in this state; or

(4) Students enrolled in an accredited college of chiropractic when the services performed are a part of the course of study and are under the direct supervision of a licensed chiropractor.

Source: Laws 1927, c. 167, § 77, p. 474; C.S.1929, § 71-1102; R.S.1943, § 71-178; Laws 1989, LB 342, § 14; Laws 1990, LB 1064, § 12; R.S.1943, (2003), § 71-178; Laws 2007, LB463, § 247.
Operative date December 1, 2008.

38-807 Chiropractic; license; qualifications required. Every applicant for a license to practice chiropractic shall present proof of graduation from an accredited college of chiropractic and (1) pass an examination given by the National Board of Chiropractic Examiners which consists of Parts I, II, III, IV, and physiotherapy or (2) pass an examination approved by the Board of Chiropractic.

Source: Laws 1927, c. 167, § 78, p. 475; C.S.1929, § 71-1103; R.S.1943, § 71-179; Laws 1965, c. 413, § 1, p. 1321; Laws 1975, LB 92, § 2; Laws 1988, LB 1100, § 29; Laws 1999, LB 828, § 65; R.S.1943, (2003), § 71-179; Laws 2007, LB463, § 248.
Operative date December 1, 2008.

38-808 Continuing competency requirements. An applicant for licensure to practice chiropractic who has met the education and examination requirements in section 38-807, 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, § 249.
Operative date December 1, 2008.

38-809 Reciprocity; continuing competency requirements. An applicant for licensure to practice chiropractic 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 two years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 1927, c. 167, § 80, p. 475; C.S.1929, § 71-1105; R.S.1943, § 71-181; Laws 1996, LB 1044, § 406; R.S.1943, (2003), § 71-181; Laws 2007, LB296, § 324; Laws 2007, LB463, § 250.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 324, with LB 463, section 250, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-810 Fees. The department shall establish and collect fees for initial licensure and renewal under the Chiropractic Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 251.
Operative date December 1, 2008.

38-811 Chiropractic practitioner; powers and duties. Chiropractic practitioners shall observe and be subject to all state and municipal laws and regulations relative to the control of contagious and infectious diseases, and all matters pertaining to public health. They shall report to the proper health officers the same as other practitioners. Chiropractic

practitioners may sign death certificates. When performing acupuncture, a chiropractor licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery when such person performs acupuncture.

Source: Laws 1927, c. 167, § 81, p. 475; C.S.1929, § 71-1106; R.S.1943, § 71-182; Laws 1945, c. 164, § 1, p. 529; Laws 2001, LB 270, § 15; R.S.1943, (2003), § 71-182; Laws 2007, LB463, § 252. Operative date December 1, 2008.

ARTICLE 9

CLINICAL NURSE SPECIALIST PRACTICE ACT

Section.

38-901 Act, how cited. Sections 38-901 to 38-910 shall be known and may be cited as the Clinical Nurse Specialist Practice Act.

Source: Laws 2005, LB 256, § 1; R.S.Supp.,2006, § 71-17,117; Laws 2007, LB463, § 253. Operative date December 1, 2008.

38-902 Definitions, where found. For purposes of the Clinical Nurse Specialist Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-903 to 38-905 apply.

Source: Laws 2007, LB463, § 254. Operative date December 1, 2008.

38-903 Approved certifying body, defined. Approved certifying body means a national certification organization which (1) is approved by the board, (2) certifies qualified licensed registered nurses for advanced practice, (3) has eligibility requirements related to education and practice, and (4) offers an examination in an area of practice which meets psychometric guidelines and tests approved by the board.

Source: Laws 2005, LB 256, § 2; R.S.Supp.,2006, § 71-17,118; Laws 2007, LB185, § 28; Laws 2007, LB296, § 493; Laws 2007, LB463, § 255.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 28, with LB 296, section 493, and LB 463, section 255, to reflect all amendments.
Note: The changes made by LB 185 and LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-904 Board, defined. Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 2007, LB463, § 256.
Operative date December 1, 2008.

38-905 Clinical nurse specialist, defined. Clinical nurse specialist means a registered nurse certified as described in section 38-908 and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a clinical nurse specialist in the State of Nebraska.

Source: Laws 2007, LB463, § 257.
Operative date December 1, 2008.

Cross Reference
Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-906 Clinical nurse specialist practice, defined. The practice of a clinical nurse specialist includes health promotion, health supervision, illness prevention, and disease management, including assessing patients, synthesizing and analyzing data, and applying advanced nursing practice. A clinical nurse specialist conducts and applies research, advocates, serves as an agent of change, engages in systems management, and assesses and intervenes in complex health care problems within the selected clinical specialty.

Source: Laws 2005, LB 256, § 4; R.S.Supp.,2006, § 71-17,120; Laws 2007, LB463, § 258.
Operative date December 1, 2008.

38-907 Exemptions from act. The Clinical Nurse Specialist Practice Act does not prohibit the performance of the professional activities of a clinical nurse specialist by a person not holding a license issued under the act if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States and performing official duties in this state; or

(3) By a person enrolled in an approved clinical nurse specialist program for the education of clinical nurse specialists as part of that approved program.

Source: Laws 2005, LB 256, § 12; R.S.Supp.,2006, § 71-17,128; Laws 2007, LB185, § 34; Laws 2007, LB463, § 259.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-908 Licensure; eligibility; application. An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a clinical nurse specialist shall be licensed as a registered nurse under the Nurse Practice Act or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska and shall submit to the department the following:

(1) Evidence that the applicant holds a graduate degree in a nursing clinical specialty area or has a graduate degree in nursing and has successfully completed a graduate-level clinical nurse specialist education program; and

(2) Evidence of certification issued by an approved certifying body or, when such certification is not available, an alternative method of competency assessment by any means approved by the board.

Source: Laws 2005, LB 256, § 3; R.S.Supp.,2006, § 71-17,119; Laws 2007, LB185, § 29; Laws 2007, LB463, § 260.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.

38-909 License; renewal; qualifications. To renew a license as a clinical nurse specialist, the applicant shall have current certification by an approved certifying body as a clinical nurse specialist or, when such certification is not available, an alternative method of competency assessment by any means approved by the board.

Source: Laws 2007, LB463, § 261.
Operative date December 1, 2008.

38-910 Use of title and abbreviation. A person licensed as a clinical nurse specialist has the right to use the title Clinical Nurse Specialist and the abbreviation CNS.

Source: Laws 2005, LB 256, § 5; R.S.Supp.,2006, § 71-17,121; Laws 2007, LB185, § 30; Laws 2007, LB463, § 262.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

ARTICLE 10

COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Section.

38-1001 Act, how cited. Sections 38-1001 to 38-10,171 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263.
Operative date December 1, 2008.

38-1002 Legislative findings. The Legislature finds that: (1) A great number of Nebraska citizens regularly demand and receive cosmetology, nail technology, esthetics, electrology, and body art services; (2) the practices of cosmetology, nail technology, esthetics, electrology, and body art involve the use of implements and chemicals that, if used or applied improperly, can be hazardous to human health and safety; (3) inadequate sanitation in the practice of cosmetology, nail technology, esthetics, electrology, or body art can encourage the spread of contagious diseases, infections, and infestations to the detriment of the health and safety of the public; (4) the knowledge of proper sanitation techniques and the proper use of implements and chemicals can best be gained by rigorous and extensive training in cosmetology, nail technology, and esthetics at institutions operated exclusively for such purposes; (5) the need of the public to be served by well-trained persons and the need of cosmetology, nail technology, and esthetics students to receive an appropriate education can best be met through the enactment of standards for the approval of schools of cosmetology, nail technology schools, and schools of esthetics; (6) the effectiveness of cosmetology, nail technology, esthetics, or electrology training and the competency to practice can best be demonstrated by the passage of an impartially administered examination before a person is permitted to practice; (7) continuing competency can best be demonstrated by participation in continuing competency activities; (8) the establishment and maintenance of a safe environment in places where cosmetology, nail technology, esthetics, electrology, or body art is practiced can best be ensured through the establishment of operating and sanitary requirements for the safe and sanitary operation of such places; (9) the protection of the health and safety of its citizens is a principal concern and duty of the State of Nebraska; and (10) the reasonable regulation and limitation of a field of practice or occupation for the purpose of protecting the health and safety of the public is a legitimate and justified exercise of the police power of the state.

Source: Laws 1986, LB 318, § 2; Laws 1995, LB 83, § 2; Laws 1999, LB 68, § 2; Laws 2002, LB 241, § 2; Laws 2002, LB 1021, § 38; Laws 2004, LB 906, § 4; Laws 2004, LB 1005, § 19; R.S.Supp.,2006, § 71-341; Laws 2007, LB463, § 264.
Operative date December 1, 2008.

38-1003 Legislative intent. The Legislature declares its intent to implement the findings specified in section 38-1002 through the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, to regulate the practices and professions of cosmetology, nail technology, esthetics, electrology, and body art and cosmetology, nail technology, esthetics, and body art education in all forms, to limit the practice and teaching of cosmetology, nail technology, esthetics, or body art to persons and institutions as stipulated in the act and to penalize persons violating the act. The Legislature directs that all interpretations of the act be made with full cognizance of the findings and intentions expressed in this section and section 38-1002.

Source: Laws 1986, LB 318, § 3; Laws 1995, LB 83, § 3; Laws 1999, LB 68, § 3; Laws 2002, LB 241, § 3; Laws 2004, LB 906, § 5; Laws 2004, LB 1005, § 20; R.S.Supp.,2006, § 71-342; Laws 2007, LB463, § 265.
Operative date December 1, 2008.

38-1004 Definitions, where found. For purposes of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1005 to 38-1056 apply.

Source: Laws 1986, LB 318, § 4; Laws 1995, LB 83, § 4; Laws 1999, LB 68, § 4; Laws 2002, LB 241, § 4; Laws 2004, LB 906, § 6; R.S.Supp.,2006, § 71-343; Laws 2007, LB463, § 266.
Operative date December 1, 2008.

38-1005 Apprentice, defined. Apprentice means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to engage in the study of any or all of the practices of cosmetology under the supervision of an instructor in an apprentice salon.

Source: Laws 1986, LB 318, § 5; R.S.1943, (2003), § 71-344; Laws 2007, LB463, § 267.
Operative date December 1, 2008.

38-1006 Apprentice salon, defined. Apprentice salon means a cosmetology salon licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the teaching of any or all of the practices of cosmetology to apprentices.

Source: Laws 1986, LB 318, § 6; R.S.1943, (2003), § 71-345; Laws 2007, LB463, § 268.
Operative date December 1, 2008.

38-1007 Board, defined. Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art.

Source: Laws 1986, LB 318, § 7; R.S.1943, (2003), § 71-346; Laws 2007, LB463, § 269.
Operative date December 1, 2008.

38-1008 Body art, defined. Body art means body piercing, branding, permanent color technology, and tattooing.

Source: Laws 2004, LB 906, § 7; R.S.Supp.,2006, § 71-346.01; Laws 2007, LB463, § 270.
Operative date December 1, 2008.

38-1009 Body art facility, defined. Body art facility means any room or space or any part thereof where body art is performed or where the business of body art is conducted.

Source: Laws 2004, LB 906, § 8; R.S.Supp.,2006, § 71-346.02; Laws 2007, LB463, § 271.
Operative date December 1, 2008.

38-1010 Body piercing, defined. Body piercing means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting removable jewelry or other objects through the human body, except that body piercing does not include puncturing the external part of the human earlobe.

Source: Laws 2004, LB 906, § 9; R.S.Supp.,2006, § 71-346.03; Laws 2007, LB463, § 272.
Operative date December 1, 2008.

38-1011 Branding, defined. Branding means a permanent mark made on human tissue by burning with a hot iron or other instrument.

Source: Laws 2004, LB 906, § 10; R.S.Supp.,2006, § 71-346.04; Laws 2007, LB463, § 273.
Operative date December 1, 2008.

38-1012 Charitable administration, defined. Charitable administration means the performance of any or all of the practices of cosmetology or nail technology without compensation for the benefit of charitable purposes or organizations.

Source: Laws 1986, LB 318, § 8; Laws 1999, LB 68, § 5; R.S.1943, (2003), § 71-347; Laws 2007, LB463, § 274.
Operative date December 1, 2008.

38-1013 Cosmetic establishment, defined. Cosmetic establishment means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the retail sale of cosmetics or other esthetics products when such activity includes any application of the products to customers other than self-application.

Source: Laws 1986, LB 318, § 9; Laws 2002, LB 241, § 5; R.S.1943, (2003), § 71-348; Laws 2007, LB463, § 275.
Operative date December 1, 2008.

38-1014 Cosmetician, defined. Cosmetician means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to apply cosmetics.

Source: Laws 1986, LB 318, § 10; R.S.1943, (2003), § 71-349; Laws 2007, LB463, § 276.
Operative date December 1, 2008.

38-1015 Cosmetologist, defined. Cosmetologist means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform all of the practices of cosmetology.

Source: Laws 1986, LB 318, § 11; R.S.1943, (2003), § 71-350; Laws 2007, LB463, § 277.
Operative date December 1, 2008.

38-1016 Cosmetology, defined. Cosmetology means the practice of performing for compensation any or all (1) of the acts of arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, styling, or similar work upon the hair, wig, wiglet, or hairpiece of any person, by any means, with hands or a mechanical or electrical apparatus or appliance; (2) esthetics; (3) nail technology; and (4) other similar practices upon the hair, scalp, face, neck, arms, hands, feet, or nails of any person when performed for the purpose of beautifying or enhancing physical appearance or the teaching of any practice specified in this section for occupational purposes.

Source: Laws 1986, LB 318, § 12; Laws 1987, LB 543, § 1; Laws 1999, LB 68, § 6; Laws 2002, LB 241, § 6; R.S.1943, (2003), § 71-351; Laws 2007, LB463, § 278.
Operative date December 1, 2008.

38-1017 Cosmetology establishment, defined. Cosmetology establishment means a cosmetology salon, esthetics salon, school of cosmetology, school of esthetics, apprentice salon, cosmetic establishment, or any other place in which any or all of the practices of cosmetology are performed on members of the general public for compensation or in which instruction or training in any or all of the practices of cosmetology is given, except when such practices constitute nonvocational training.

Source: Laws 1986, LB 318, § 13; Laws 1999, LB 68, § 7; Laws 2002, LB 241, § 7; R.S.1943, (2003), § 71-352; Laws 2007, LB463, § 279.
Operative date December 1, 2008.

38-1018 Cosmetology salon, defined. Cosmetology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of cosmetology by persons licensed or registered under such act.

Source: Laws 1986, LB 318, § 14; R.S.1943, (2003), § 71-353; Laws 2007, LB463, § 280.
Operative date December 1, 2008.

38-1019 Domestic administration, defined. Domestic administration means the performance of any or all of the practices of cosmetology or nail technology upon members of a person's immediate family.

Source: Laws 1986, LB 318, § 17; Laws 1999, LB 68, § 8; R.S.1943, (2003), § 71-356; Laws 2007, LB463, § 281.
Operative date December 1, 2008.

38-1020 Electrologist, defined. Electrologist means a person who engages in the practice of electrolysis for permanent hair removal.

Source: Laws 1995, LB 83, § 5; R.S.1943, (2003), § 71-356.01; Laws 2007, LB463, § 282.
Operative date December 1, 2008.

38-1021 Electrology, defined. Electrology means the art and practice relating to the removal of hair from normal skin of the human body by electrolysis.

Source: Laws 1995, LB 83, § 6; R.S.1943, (2003), § 71-356.02; Laws 2007, LB463, § 283.
Operative date December 1, 2008.

38-1022 Electrology establishment, defined. Electrology establishment means a fixed structure or part thereof or any other place in which any or all of the practices of electrology are performed on members of the general public for compensation or where instruction or training in electrology is performed except when such training is nonvocational training.

Source: Laws 1995, LB 83, § 9; R.S.1943, (2003), § 71-356.03; Laws 2007, LB463, § 284.
Operative date December 1, 2008.

38-1023 Electrology instructor, defined. Electrology instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of electrology.

Source: Laws 1995, LB 83, § 7; Laws 2004, LB 1005, § 21; R.S.Supp.,2006, § 71-356.04; Laws 2007, LB463, § 285.
Operative date December 1, 2008.

38-1024 Electrolysis, defined. Electrolysis means the permanent removal of hair by the application of an electrical current to the dermal papilla by a filament to cause decomposition, coagulation, or dehydration within the hair follicle by means of short wave or galvanic current or the blend, as approved by the federal Food and Drug Administration.

Source: Laws 1995, LB 83, § 8; R.S.1943, (2003), § 71-356.05; Laws 2007, LB463, § 286.
Operative date December 1, 2008.

38-1025 Esthetician, defined. Esthetician means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform all of the practices of esthetics.

Source: Laws 1986, LB 318, § 18; Laws 2002, LB 241, § 8; R.S.1943, (2003), § 71-357; Laws 2007, LB463, § 287.
Operative date December 1, 2008.

38-1026 Esthetics, defined. Esthetics means the practice for compensation of using an electrical or mechanical apparatus or appliance or applying and using cosmetic preparations, antiseptics, chemicals, tonics, lotions, creams, or other similar products upon the skin for personal beauty care.

Source: Laws 1986, LB 318, § 27; R.S.1943, (1996), § 71-366; Laws 2002, LB 241, § 9; R.S.1943, (2003), § 71-357.01; Laws 2007, LB463, § 288.
Operative date December 1, 2008.

38-1027 Esthetics instructor, defined. Esthetics instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of esthetics in a school of cosmetology or a school of esthetics.

Source: Laws 2002, LB 241, § 10; R.S.1943, (2003), § 71-357.02; Laws 2007, LB463, § 289.
Operative date December 1, 2008.

38-1028 Esthetics salon, defined. Esthetics salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of esthetics by persons licensed or registered under such act.

Source: Laws 1986, LB 318, § 28; R.S.1943, (1996), § 71-367; Laws 2002, LB 241, § 11; R.S.1943, (2003), § 71-357.03; Laws 2007, LB463, § 290.
Operative date December 1, 2008.

38-1029 Guest artist, defined. Guest artist means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to demonstrate cosmetology products or procedures for the purpose of imparting professional knowledge and information to persons licensed or registered under the act or to persons owning or operating licensed cosmetology establishments under the sponsorship of a licensed cosmetology establishment or a cosmetologist licensed in Nebraska.

Source: Laws 1986, LB 318, § 19; R.S.1943, (2003), § 71-358; Laws 2007, LB463, § 291.
Operative date December 1, 2008.

38-1030 Guest body artist, defined. Guest body artist means a person registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to demonstrate body art products or procedures for the purpose of imparting professional knowledge and information to persons licensed in this state to perform body art or to persons owning or operating a licensed body art facility under the sponsorship of a licensed body art facility or a person licensed in this state to perform body art.

Source: Laws 2004, LB 906, § 11; R.S.Supp.,2006, § 71-358.01; Laws 2007, LB463, § 292.
Operative date December 1, 2008.

38-1031 Instructor, defined. Instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach any or all of the practices of cosmetology in a school of cosmetology or an apprentice salon.

Source: Laws 1986, LB 318, § 20; R.S.1943, (2003), § 71-359; Laws 2007, LB463, § 293. Operative date December 1, 2008.

38-1032 Jurisdiction, defined. Jurisdiction means the District of Columbia and any state, territory, or possession of the United States of America.

Source: Laws 1986, LB 318, § 21; R.S.1943, (2003), § 71-360; Laws 2007, LB463, § 294. Operative date December 1, 2008.

38-1033 Manicuring, defined. Manicuring means the practice of performing any or all of the acts of cutting, shaping, trimming, polishing, coloring, tinting, cleansing, reshaping, or other similar cosmetic or sanitary acts on the natural fingernails or toenails of a person but does not include the practice of nail technology.

Source: Laws 2001, LB 209, § 14; R.S.1943, (2003), § 71-360.01; Laws 2007, LB463, § 295. Operative date December 1, 2008.

38-1034 Nail technician, defined. Nail technician means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform the practices of nail technology.

Source: Laws 1999, LB 68, § 9; R.S.1943, (2003), § 71-361.01; Laws 2007, LB463, § 296. Operative date December 1, 2008.

38-1035 Nail technology, defined. Nail technology means (1) attaching, applying, fitting, shaping, or adjusting artificial nails using acrylic, resin, fabric, or gel application systems, (2) sanitizing of the nail bed by brushing on or spraying material in preparation for attaching, fitting, shaping, or adjusting artificial nails using acrylic, resin, fabric, or gel application systems, (3) cutting, filing, buffing, shaping, trimming, polishing, coloring, tinting, cleansing, reshaping, or other cosmetic acts on the nails of a person when done in conjunction with the activities described in subdivisions (1) and (2) of this section, (4) the ability to detect infection, fungus, or nail disorders that contraindicate the application of artificial nails, and (5) cleansing, stimulating, manipulating, exercising, or similar acts on the hands or feet of any person when done in conjunction with the activities described in subdivisions (1) and (2) of this section. Nail technology does not include cutting nail beds, corns, or calluses or medical treatment involving the feet, hands, or nails.

Source: Laws 1999, LB 68, § 10; R.S.1943, (2003), § 71-361.02; Laws 2007, LB463, § 297. Operative date December 1, 2008.

38-1036 Nail technology establishment, defined. Nail technology establishment means a nail technology salon, nail technology school, or any other place in which the

practices of nail technology are performed on members of the general public for compensation or in which instruction or training in the practices of nail technology is given, except when such practices constitute nonvocational training.

Source: Laws 1999, LB 68, § 11; R.S.1943, (2003), § 71-361.03; Laws 2007, LB463, § 298. Operative date December 1, 2008.

38-1037 Nail technology instructor, defined. Nail technology instructor means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to teach the practices of nail technology in a nail technology school.

Source: Laws 1999, LB 68, § 12; R.S.1943, (2003), § 71-361.04; Laws 2007, LB463, § 299. Operative date December 1, 2008.

38-1038 Nail technology salon, defined. Nail technology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of the practices of nail technology by persons licensed or registered under the act.

Source: Laws 1999, LB 68, § 13; R.S.1943, (2003), § 71-361.05; Laws 2007, LB463, § 300. Operative date December 1, 2008.

38-1039 Nail technology school, defined. Nail technology school means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for teaching the practices of nail technology to nail technology students.

Source: Laws 1999, LB 68, § 14; R.S.1943, (2003), § 71-361.06; Laws 2007, LB463, § 301. Operative date December 1, 2008.

38-1040 Nail technology student, defined. Nail technology student means a person engaged in the study of the practices of nail technology under the supervision of a nail technology instructor in a nail technology school.

Source: Laws 1999, LB 68, § 15; R.S.1943, (2003), § 71-361.07; Laws 2007, LB463, § 302. Operative date December 1, 2008.

38-1041 Nail technology student instructor, defined. Nail technology student instructor means a person engaged in nail technology instructor's training in a nail technology school to teach nail technology students in a nail technology school under the supervision of a nail technology instructor.

Source: Laws 1999, LB 68, § 16; R.S.1943, (2003), § 71-361.08; Laws 2007, LB463, § 303. Operative date December 1, 2008.

38-1042 Nail technology temporary practitioner, defined. Nail technology temporary practitioner means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform the practices of nail

technology for a limited time under the supervision of a licensed nail technician or nail technology instructor.

Source: Laws 1999, LB 68, § 17; R.S.1943, (2003), § 71-361.09; Laws 2007, LB463, § 304.
Operative date December 1, 2008.

38-1043 Nonvocational training, defined. Nonvocational training means the act of imparting knowledge of or skills in any or all of the practices of cosmetology, nail technology, esthetics, or electrology to persons not licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of noncommercial use by those receiving such training.

Source: Laws 1986, LB 318, § 23; Laws 1995, LB 83, § 11; Laws 1999, LB 68, § 18; Laws 2002, LB 241, § 12; R.S.1943, (2003), § 71-362; Laws 2007, LB463, § 305.
Operative date December 1, 2008.

38-1044 Permanent color technology, defined. Permanent color technology means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for cosmetic purposes.

Source: Laws 2004, LB 906, § 12; R.S.Supp.,2006, § 71-362.01; Laws 2007, LB463, § 306.
Operative date December 1, 2008.

38-1045 Practices regulated under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, defined. Practices regulated under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act means body art, cosmetology, electrology, esthetics, and nail technology.

Source: Laws 2004, LB 906, § 13; R.S.Supp.,2006, § 71-363.01; Laws 2007, LB463, § 307.
Operative date December 1, 2008.

38-1046 Practitioner, defined. Practitioner means a person who performs any or all of the practices of cosmetology, nail technology, esthetics, or electrology for compensation or who performs any or all of the practices of body art.

Source: Laws 1986, LB 318, § 25; Laws 1995, LB 83, § 12; Laws 1999, LB 68, § 19; Laws 2002, LB 241, § 13; Laws 2004, LB 906, § 14; R.S.Supp.,2006, § 71-364; Laws 2007, LB463, § 308.
Operative date December 1, 2008.

38-1047 School of cosmetology, defined. School of cosmetology means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the teaching of any or all of the practices of cosmetology to students.

Source: Laws 1986, LB 318, § 26; Laws 1987, LB 543, § 2; R.S.1943, (2003), § 71-365; Laws 2007, LB463, § 309.
Operative date December 1, 2008.

38-1048 School of electrolysis, defined. School of electrolysis means a school for the education and training of electrologists.

Source: Laws 1995, LB 83, § 10; Laws 2004, LB 1005, § 22; R.S.Supp.,2006, § 71-365.01; Laws 2007, LB463, § 310.
Operative date December 1, 2008.

38-1049 School of esthetics, defined. School of esthetics means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for teaching the practices of esthetics to esthetics students.

Source: Laws 2002, LB 241, § 14; R.S.1943, (2003), § 71-365.02; Laws 2007, LB463, § 311.
Operative date December 1, 2008.

38-1050 Student, defined. Student means a person engaged in the study of any or all of the practices of cosmetology or esthetics under the supervision of an instructor or esthetics instructor in a school of cosmetology or school of esthetics.

Source: Laws 1986, LB 318, § 29; Laws 1995, LB 83, § 13; Laws 2002, LB 241, § 15; Laws 2004, LB 1005, § 23; R.S.Supp.,2006, § 71-368; Laws 2007, LB463, § 312.
Operative date December 1, 2008.

38-1051 Student instructor, defined. Student instructor means a person engaged in instructor's or esthetics instructor's training in a school of cosmetology or school of esthetics and in teaching students in a school of cosmetology or school of esthetics under the supervision of an instructor.

Source: Laws 1986, LB 318, § 30; Laws 2002, LB 241, § 16; R.S.1943, (2003), § 71-369; Laws 2007, LB463, § 313.
Operative date December 1, 2008.

38-1052 Supervision, defined. Supervision means direct day-to-day knowledge of and control over the actions of one individual by another.

Source: Laws 1986, LB 318, § 31; R.S.1943, (2003), § 71-370; Laws 2007, LB463, § 314.
Operative date December 1, 2008.

38-1053 Tattoo, defined. Tattoo means the indelible decorative mark, figure, or design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.

Source: Laws 2004, LB 906, § 15; R.S.Supp.,2006, § 71-370.01; Laws 2007, LB463, § 315.
Operative date December 1, 2008.

38-1054 Tattooing, defined. Tattooing means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being so as to form indelible marks for decorative or figurative purposes.

Source: Laws 2004, LB 906, § 16; R.S.Supp.,2006, § 71-370.02; Laws 2007, LB463, § 316. Operative date December 1, 2008.

38-1055 Teaching, defined. Teaching means the act of imparting and demonstrating knowledge of cosmetology, nail technology, esthetics, or electrology theory and practices to students, nail technology students, or apprentices in an apprentice salon, a school of cosmetology, a nail technology school, or a school of esthetics by an instructor, an esthetics instructor, a nail technology instructor, a nail technology student instructor, or a student instructor for the purpose of preparing the students, nail technology students, nail technology student instructors, or apprentices to engage in the occupations of cosmetology, nail technology, esthetics, or electrology.

Source: Laws 1986, LB 318, § 32; Laws 1995, LB 83, § 14; Laws 1999, LB 68, § 20; Laws 2002, LB 241, § 17; Laws 2004, LB 1005, § 24; R.S.Supp.,2006, § 71-371; Laws 2007, LB463, § 317. Operative date December 1, 2008.

38-1056 Temporary practitioner, defined. Temporary practitioner means a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to perform any or all of the practices of cosmetology for a limited time under the supervision at all times of a designated supervisor.

Source: Laws 1986, LB 318, § 33; R.S.1943, (2003), § 71-372; Laws 2007, LB463, § 318. Operative date December 1, 2008.

38-1057 Board; members; qualifications. (1) The board shall consist of ten professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

(2) The professional members shall include:

(a) One school owner who is also licensed as either a cosmetologist, nail technician, or esthetician;

(b) One salon owner who is licensed as a cosmetologist;

(c) Two cosmetologists who are not school owners;

(d) One nail technician who is not a school owner;

(e) One esthetician who is not a school owner;

(f) One electrologist;

(g) One practitioner of body art;

(h) One nail technology instructor or esthetics instructor who is not a school owner; and

(i) One cosmetology instructor who is not a school owner.

(3) No members of the board who are school owners, salon owners, electrologists, nail technicians, instructors, cosmetologists, or practitioners of body art may be affiliated with the same establishment.

(4) As the terms of the members serving on December 1, 2008, expire, successors shall be appointed in accordance with subsection (2) of this section.

Source: Laws 1986, LB 318, § 35; Laws 1987, LB 543, § 3; Laws 1994, LB 1223, § 25; Laws 1995, LB 83, § 15; Laws 1999, LB 68, § 21; Laws 2002, LB 241, § 18; Laws 2005, LB 382, § 9; R.S.Supp.,2006, § 71-374; Laws 2007, LB463, § 319.
Operative date December 1, 2008.

38-1058 Cosmetology; licensure or registration required. It shall be unlawful for any person, group, company, or other entity to engage in any of the following acts without being duly licensed or registered as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of cosmetology or to act as a practitioner;

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of cosmetology; or

(3) To operate or advertise or hold oneself out as operating a cosmetology establishment in which any of the practices of cosmetology or the teaching of any of the practices of cosmetology are carried out.

Source: Laws 1986, LB 318, § 46; R.S.1943, (2003), § 71-385; Laws 2007, LB463, § 320.
Operative date December 1, 2008.

38-1059 Electrology; licensure required. No person, group, company, limited liability company, or other entity shall engage in any of the following acts without being duly licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of electrology; or

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of electrology.

Source: Laws 1995, LB 83, § 20; Laws 2004, LB 1005, § 25; R.S.Supp.,2006, § 71-385.01; Laws 2007, LB463, § 321.
Operative date December 1, 2008.

38-1060 Body art; license required; conditions. (1) No person shall perform any of the practices of body art or display a sign to, or in any other way, advertise or purport to be engaged in the business of practicing body art unless such person is licensed by the department.

(2) An applicant for licensure in any of the practices of body art shall show to the satisfaction of the department that the applicant:

(a) Has complied with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the applicable rules and regulations adopted and promulgated under the act;

(b) Is at least eighteen years of age;

(c) Has completed formal education equivalent to a United States high school education;

(d) Has submitted evidence of training or experience prescribed or approved by the board to ensure the protection of the public in performing the practices of body art for which the applicant is seeking licensure; and

(e) Has successfully completed an examination prescribed or approved by the board to test the applicant's knowledge of safety, sanitation, and sterilization techniques and infection control practices and requirements.

Source: Laws 2004, LB 906, § 25; R.S.Supp.,2006, § 71-385.02; Laws 2007, LB463, § 322. Operative date December 1, 2008.

38-1061 Licensure or registration; categories; use of titles prohibited; practice in licensed establishment or facility. (1) All practitioners shall be licensed or registered by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act in a category or categories appropriate to their practice.

(2) Licensure shall be required before any person may engage in the full, unsupervised practice or teaching of cosmetology, electrology, esthetics, nail technology, or body art, and no person may assume the title of cosmetologist, electrologist, esthetician, instructor, nail technician, nail technology instructor, esthetics instructor, permanent color technician, tattoo artist, body piercer, or body brander without first being licensed by the department.

(3) All licensed practitioners shall practice in an appropriate licensed establishment or facility.

Source: Laws 1986, LB 318, § 47; Laws 1995, LB 83, § 21; Laws 1999, LB 68, § 27; Laws 2002, LB 241, § 22; Laws 2004, LB 906, § 19; R.S.Supp.,2006, § 71-386; Laws 2007, LB463, § 323. Operative date December 1, 2008.

38-1062 Licensure by examination; requirements. In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) Has completed formal education equivalent to a United States high school education;

(3) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(4) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(5) Has graduated from a school of cosmetology or an apprentice salon in or outside of Nebraska, a school of esthetics in or outside of Nebraska, or a school of electrolysis upon completion of a program of studies appropriate to the practices for which licensure is being

sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of two thousand one hundred hours and two thousand credits;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours and six hundred credits;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of nine hundred twenty-five hours beyond the program of studies required for licensure as a cosmetologist earned in a period of not less than six months;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours and six hundred credits;

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least two years immediately before the application; and

(g) For licensure as an esthetics instructor, completion of a program of studies consisting of a minimum of three hundred hours beyond the program of studies required for licensure as an esthetician and current licensure as an esthetician in Nebraska.

Source: Laws 1986, LB 318, § 48; Laws 1987, LB 543, § 6; Laws 1995, LB 83, § 22; Laws 1996, LB 1155, § 26; Laws 1997, LB 752, § 168; Laws 2002, LB 241, § 23; Laws 2004, LB 1005, § 26; R.S.Supp.,2006, § 71-387; Laws 2007, LB463, § 324.
Operative date December 1, 2008.

38-1063 Application for examination; procedure. A complete application for examination shall be postmarked no later than fifteen days before the beginning of the examination for which application is being made. Applications received after such date shall be considered as applications for the next scheduled examination. No application for any type of licensure or registration shall be considered complete unless all information requested in the application has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1986, LB 318, § 49; Laws 1989, LB 344, § 8; Laws 2003, LB 242, § 82; R.S.1943, (2003) § 71-388; Laws 2007, LB463, § 325.
Operative date December 1, 2008.

38-1064 Licensure; examinations; duties; examinees. (1) The board shall approve and the department shall cause examinations to be administered as required for licensure under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of establishing the possession of minimum competency in the knowledge and skills required on the part of the applicant.

(2) No person shall be permitted to take an examination for licensure unless he or she has met all the requirements of subdivisions (1), (2), and (5) of section 38-1062 except for persons taking the examination under section 38-1067.

Source: Laws 1986, LB 318, § 50; Laws 1987, LB 543, § 7; Laws 1995, LB 83, § 23; Laws 2004, LB 1005, § 27; R.S.Supp.,2006, § 71-389; Laws 2007, LB463, § 326.
Operative date December 1, 2008.

38-1065 Examinations; requirements; grades. (1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology, schools of esthetics, or schools of electrolysis.

(2) At least two examinations shall be given annually.

(3) Practical examinations may be offered as either written or hands-on and shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.

(4) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on all examinations.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; R.S.1943, (2003), § 71-390; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 366, with LB 463, section 327, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1066 Reciprocity; requirements. The department may grant a license based on licensure in another jurisdiction to any person who meets the requirements of subdivisions (1) and (2) of section 38-1062 and who presents proof of the following:

(1) That he or she is currently licensed in the appropriate category in another jurisdiction and that he or she has never been disciplined or had his or her license revoked. An applicant seeking licensure as an instructor in the manner provided in this section shall be licensed as an instructor in another jurisdiction. An applicant seeking licensure as a cosmetologist in the manner provided in this section shall be licensed as a cosmetologist in another jurisdiction. An applicant seeking licensure as an esthetician in the manner provided in this section shall be licensed as a cosmetologist, an esthetician, or an equivalent title in another jurisdiction. An applicant seeking licensure as an esthetics instructor in the manner provided in this section shall be licensed as a cosmetology instructor, esthetics instructor, or the equivalent in another jurisdiction. An applicant seeking licensure as an electrologist or an electrology instructor in the manner provided in this section shall be licensed as an electrologist or an electrology instructor, respectively, in another jurisdiction;

(2) That such license was issued on the basis of an examination and the results of the examination. If an examination was not required for licensure in the other jurisdiction, the applicant shall take the Nebraska examination; and

(3) That the applicant complies with the hour requirements of subdivision (5) of section 38-1062 through any combination of hours earned as a student or apprentice in a cosmetology establishment or an electrology establishment licensed or approved by the jurisdiction in which it was located and hour-equivalents granted for recent work experience, with hour-equivalents recognized as follows:

(a) Each month of full-time practice as an instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an instructor's license or a cosmetology license and one hundred hour-equivalents toward an esthetician's license;

(b) Each month of full-time practice as a cosmetologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward a cosmetology license and one hundred hour-equivalents toward an esthetician's license;

(c) Each month of full-time practice as an esthetician within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetician's license;

(d) Each month of full-time practice as an esthetics instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetics instructor's license; and

(e) Each month of full-time practice as an electrologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an electrologist's license.

Source: Laws 1986, LB 318, § 55; Laws 1987, LB 543, § 9; Laws 1995, LB 83, § 26; Laws 2002, LB 241, § 24; R.S.1943, (2003), § 71-394; Laws 2007, LB463, § 328.
Operative date December 1, 2008.

38-1067 Foreign-trained applicants; examination requirements. (1) Applicants for Nebraska licensure who received their training in foreign countries may not be licensed by waiver of examination. In order to be considered eligible to take the examination, they shall meet the requirements of subdivisions (1) and (2) of section 38-1062 and, in order to establish equivalency with subdivision (5) of section 38-1062, shall present proof satisfactory to the department of one of the following:

(a) Current licensure or equivalent official recognition of the right to practice in a foreign country; or

(b) At least five years of practice within the eight years immediately preceding the application.

(2) In all cases such applicants shall take the examination for licensure in the State of Nebraska.

Source: Laws 1986, LB 318, § 56; Laws 1987, LB 543, § 10; Laws 1995, LB 83, § 27; R.S.1943, (2003), § 71-395; Laws 2007, LB463, § 329.
Operative date December 1, 2008.

38-1068 License; display. Every person holding a license issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act

shall display it in a conspicuous place in his or her principal place of employment, and every cosmetology establishment and body art facility shall so display the then current licenses of all practitioners there employed.

Source: Laws 1986, LB 318, § 57; Laws 1995, LB 83, § 29; Laws 2004, LB 906, § 20; R.S.Supp.,2006, § 71-396; Laws 2007, LB463, § 330.
Operative date December 1, 2008.

38-1069 Registration; when required; temporary practitioner; license. Registration shall be required before any person may act as a guest artist, guest body artist, cosmetician, student, apprentice, or student instructor, and no person shall assume any title indicative of any of such areas of activity without first being registered or licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. A license as a temporary practitioner shall be required before any person may act as a temporary practitioner, and no person shall assume any title indicative of being a temporary practitioner without first being so licensed by the department under the act.

Source: Laws 1986, LB 318, § 59; Laws 2004, LB 906, § 22; R.S.Supp.,2006, § 71-398; Laws 2007, LB463, § 331.
Operative date December 1, 2008.

38-1070 Registration; temporary license; general requirements. An individual making application for registration or a temporary license shall meet, and present to the department evidence of meeting, the requirements for the specific type of registration or license applied for.

Source: Laws 1986, LB 318, § 60; R.S.1943, (2003), § 71-399; Laws 2007, LB463, § 332.
Operative date December 1, 2008.

38-1071 Registration as guest artist; requirements. Applicants for registration as guest artists shall show evidence of licensure in another jurisdiction or other evidence as directed by the department sufficient to demonstrate that they possess education or experience of benefit to licensed or registered practitioners and are under the sponsorship of a licensed cosmetology establishment or cosmetologist for guest artists or a licensed esthetician for quest artists only performing esthetics.

Source: Laws 1986, LB 318, § 61; Laws 2004, LB 906, § 23; R.S.Supp.,2006, § 71-3,100; Laws 2007, LB463, § 333.
Operative date December 1, 2008.

38-1072 Registration as cosmetician; requirements. An applicant for registration as a cosmetician shall show evidence that he or she is or intends to become employed as a cosmetician and has received instruction in the chemical properties of, and potential reactions to, the cosmetics he or she intends to apply from his or her employers or from the manufacturers or distributors of the cosmetic products and is aware of actions to take in the event of such a reaction.

Source: Laws 1986, LB 318, § 62; R.S.1943, (2003), § 71-3,101; Laws 2007, LB463, § 334.
Operative date December 1, 2008.

38-1073 Licensure as temporary practitioner; requirements. An applicant for licensure as a temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed cosmetology establishment under the supervision of a licensed practitioner. An individual registered as a temporary practitioner on December 1, 2008, shall be deemed to be licensed as a temporary practitioner under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act on such date. The temporary practitioner may continue to practice under such registration as a temporary license until it would have expired under its terms.

Source: Laws 1986, LB 318, § 65; R.S.1943, (2003), § 71-3,104; Laws 2007, LB463, § 335.
Operative date December 1, 2008.

38-1074 Registration; temporary licensure; not renewable; expiration dates; extension. (1) Registration and temporary licensure shall be granted for a set period of time and cannot be renewed.

(2) Registration as a guest artist shall expire two years following the initial date of issuance.

(3) Registration as a cosmetician shall expire two years following the initial date of issuance.

(4) Registration as a student, apprentice, or student instructor shall expire upon successful completion of the licensing examination or termination of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon.

(5) Licensure as a temporary practitioner shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first, except that the license of a temporary practitioner who fails to take the first scheduled examination shall expire immediately unless the department finds that the temporary practitioner was unable to attend the examination due to an emergency or other valid circumstances, in which case the department may extend the license an additional eight weeks or until receipt of the examination results, whichever occurs first. No license may be extended in such manner more than once.

Source: Laws 1986, LB 318, § 66; Laws 1987, LB 543, § 13; Laws 1995, LB 83, § 32; Laws 2002, LB 241, § 28; Laws 2004, LB 906, § 24; Laws 2004, LB 1005, § 29; R.S.Supp.,2006, § 71-3,105; Laws 2007, LB463, § 336.
Operative date December 1, 2008.

38-1075 Act; activities exempt. The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act does not apply to or restrict the activities of the following:

(1) Any person holding a current license or certificate issued pursuant to the Uniform Credentialing Act when engaged in the usual and customary practice of his or her profession or occupation;

(2) Any person engaging solely in earlobe piercing;

(3) Any person when engaged in domestic or charitable administration;

(4) Any person performing any of the practices of cosmetology or nail technology solely for theatrical presentations or other entertainment functions;

(5) Any person practicing cosmetology, electrology, esthetics, or nail technology within the confines of a hospital, nursing home, massage therapy establishment, funeral establishment, or other similar establishment or facility licensed or otherwise regulated by the department, except that no unlicensed or unregistered person may accept compensation for such practice;

(6) Any person providing services during a bona fide emergency;

(7) Any retail or wholesale establishment or any person engaged in the sale of cosmetics, nail technology products, or other beauty products when the products are applied by the customer or when the application of the products is in direct connection with the sale or attempted sale of such products at retail;

(8) Any person when engaged in nonvocational training;

(9) A person demonstrating on behalf of a manufacturer or distributor any cosmetology, nail technology, electrolysis, or body art equipment or supplies if such demonstration is performed without charge;

(10) Any person or licensee engaged in the practice or teaching of manicuring; and

(11) Any person or licensee engaged in the practice of airbrush tanning or temporary, nonpermanent airbrush tattooing.

Source: Laws 1986, LB 318, § 67; Laws 1987, LB 543, § 14; Laws 1988, LB 1100, § 97; Laws 1995, LB 83, § 33; Laws 1999, LB 68, § 44; Laws 2001, LB 209, § 16; Laws 2004, LB 906, § 28; Laws 2005, LB 256, § 33; R.S.Supp.,2006, § 71-3,106; Laws 2007, LB463, § 337.
Operative date December 1, 2008.

38-1076 Epilators; requirements. All epilators used by an electrologist shall be approved by the federal Food and Drug Administration.

Source: Laws 1995, LB 83, § 40; Laws 2004, LB 1005, § 30; R.S.Supp.,2006, § 71-3,106.01; Laws 2007, LB463, § 338.
Operative date December 1, 2008.

38-1077 Continuing competency requirements; waiver; limited exemptions. The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, the following exemptions shall apply:

(1) An instructor who meets the continuing competency requirements for the instructor's license shall be exempt from meeting the continuing competency requirements for his or her cosmetologist license for that biennium;

(2) An electrology instructor who meets the continuing competency requirements for the electrology instructor's license shall be exempt from meeting the continuing competency requirements for his or her electrologist license for that biennium; and

(3) An esthetics instructor who meets the continuing education requirements for the esthetics instructor's license shall be exempt from meeting the continuing education requirements for his or her esthetician license for that biennium.

Source: Laws 1986, LB 318, § 78; Laws 1995, LB 83, § 37; Laws 2002, LB 241, § 31; Laws 2002, LB 1021, § 46; R.S.1943, (2003), § 71-3,117; Laws 2007, LB463, § 339.
Operative date December 1, 2008.

38-1078 Cosmetology establishment; license required; conditions. No person shall operate or profess or attempt to operate a cosmetology establishment unless such establishment is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. The department shall not issue or renew a license for a cosmetology establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of cosmetology in any location or premises other than a licensed cosmetology establishment except as specifically permitted in the act.

Source: Laws 1986, LB 318, § 80; R.S.1943, (2003), § 71-3,119; Laws 2007, LB463, § 340.
Operative date December 1, 2008.

38-1079 Licensed cosmetology establishment; nail technology services. A licensed cosmetology establishment is not required to be licensed as a nail technology salon to provide nail technology services by either a licensed cosmetologist or by a licensed nail technologist.

Source: Laws 2001, LB 209, § 15; R.S.1943, (2003), § 71-3,119.01; Laws 2007, LB463, § 341.
Operative date December 1, 2008.

38-1080 Body art facility; license required; renewal. (1) No person shall establish or operate a body art facility in this state unless such facility is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. The department shall not issue or renew a license for a body art facility until all applicable requirements of the act have been complied with and the facility has been inspected by the department. No person shall engage in any of the practices of body art in any location or premises other than a licensed body art facility except as specifically permitted in the act. The department shall issue a license to operate a body art facility to each qualified applicant.

(2) The procedure for renewing a body art facility license shall be in accordance with section 38-143, except that in addition to all other requirements, no body art facility license may be renewed unless the facility has attained a rating of satisfactory on its most recent operation inspection. The license of any facility not attaining such rating shall be placed on inactive status and shall not be open to the public until all deficiencies have been corrected.

(3) The license of a body art facility that has been revoked for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such facility can reopen for business.

(4) Each body art facility license shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such facility may reopen for business.

Source: Laws 2004, LB 906, § 26; R.S.Supp.,2006, § 71-3,119.02; Laws 2007, LB463, § 342.
Operative date December 1, 2008.

38-1081 Body art facility; operating requirements. (1) In order to maintain a license in good standing, each body art facility or the owner of such facility or his or her agent shall:

(a) At all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(b) Notify the department at least thirty days prior to any change of ownership, name, or address, and within one week after a facility is permanently closed, except in emergency circumstances as determined by the department;

(c) Permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during normal operating hours, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas, personnel, and records requested by the inspector; and

(d) Display in a conspicuous place near the place where body art is performed the following records:

(i) The then current license to operate the body art facility;

(ii) The then current license of each person performing body art; and

(iii) The inspection report from the most recent operation inspection.

(2) The owner of each body art facility shall have full responsibility for ensuring that the facility is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the facility.

Source: Laws 2004, LB 906, § 27; R.S.Supp.,2006, § 71-3,119.03; Laws 2007, LB463, § 343.
Operative date December 1, 2008.

38-1082 Salon, defined. For purposes of sections 38-1083 to 38-1090, salon means cosmetology salon and esthetics salon.

Source: Laws 1986, LB 318, § 81; Laws 2002, LB 241, § 32; R.S.1943, (2003), § 71-3,120; Laws 2007, LB463, § 344.
Operative date December 1, 2008.

38-1083 Salon; license; requirements. In order to be licensed as a salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon shall be a fixed, permanent structure or part of one;

(2) The proposed salon shall be physically separated from all other business or residential activities except barbering, manicuring, pedicuring, and retail sales;

(3) The separation required in subdivision (2) of this section shall be by fixed walls or by partitions not less than six feet high;

(4) Areas of the salon used for barbering, manicuring, or pedicuring shall be clearly identified as such to the public by a sign and shall be visually distinct from other areas of the salon;

(5) All areas of the salon, including those used for manicures, pedicures, or retail sales, shall comply with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) A salon located in a residence shall be entirely distinct and separate from any living quarters, except that there may be one connecting door to the living portion of the dwelling as an access entrance to the salon for the owner or operator, but such entrance shall not be for the use of the general public;

(7) The entrance into the proposed salon used by the general public shall lead directly from the outside to the salon, except that a salon located in a commercial building may have its entrance open from a public area such as a foyer, hallway, mall, concourse, or retail sales floor. Any salon in existence and licensed on August 30, 1987, shall not be required to comply with this subdivision;

(8) The proposed salon shall have at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner, except that a salon employing a licensee exclusively to perform home services need not provide additional space for such employee;

(9) The proposed salon shall include toilet facilities unless the salon is located in a commercial building in which public toilet facilities are available that open directly off of a public area; and

(10) The proposed salon shall meet all state or local building code and fire code requirements.

Source: Laws 1986, LB 318, § 82; Laws 1987, LB 543, § 19; R.S.1943, (2003), § 71-3,121; Laws 2007, LB463, § 345.
Operative date December 1, 2008.

38-1084 Salon license; application; procedure; additional information. Any person seeking a license to operate a salon shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be submitted at least thirty days before the proposed opening of the salon for operation. Along with the application the applicant shall submit:

(1) A detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-1083; and

(2) Evidence of minimal property damage, bodily injury, and liability insurance coverage for the proposed salon.

Source: Laws 1986, LB 318, § 83; R.S.1943, (2003), § 71-3,122; Laws 2007, LB463, § 346. Operative date December 1, 2008.

38-1085 Salon; application; review; denial; issuance; inspection. Each application for a license to operate a salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. In the event an application is approved, the department shall issue the applicant a certificate of consideration to operate a salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months of the issuance of such certificate. Salons passing the inspection shall be issued a permanent license. Salons failing the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1986, LB 318, § 84; R.S.1943, (2003), § 71-3,123; Laws 2007, LB463, § 347. Operative date December 1, 2008.

38-1086 Licensed salon; operating requirements. In order to maintain its license in good standing, each salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week if a salon is permanently closed, except in emergency circumstances as determined by the department;

(3) No salon shall permit any unlicensed or unregistered person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses or registrations of all persons employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act; and

(8) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 1986, LB 318, § 85; R.S.1943, (2003), § 71-3,124; Laws 2007, LB463, § 348.
Operative date December 1, 2008.

38-1087 Salon license; renewal; insurance. The procedure for renewing a salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon.

Source: Laws 1986, LB 318, § 86; Laws 2003, LB 242, § 86; R.S.1943, (2003), § 71-3,125; Laws 2007, LB463, § 349.
Operative date December 1, 2008.

38-1088 Salon license; revoked or expired; effect. The license of a salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1986, LB 318, § 87; R.S.1943, (2003), § 71-3,126; Laws 2007, LB463, § 350.
Operative date December 1, 2008.

38-1089 Salon license; change of ownership or location; effect. Each salon license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1986, LB 318, § 88; R.S.1943, (2003), § 71-3,127; Laws 2007, LB463, § 351.
Operative date December 1, 2008.

38-1090 Salon owner; liability. The owner of each salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 1986, LB 318, § 89; R.S.1943, (2003), § 71-3,128; Laws 2007, LB463, § 352.
Operative date December 1, 2008.

38-1091 Cosmetic establishment; license; requirements. In order to be licensed as a cosmetic establishment by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed cosmetic establishment shall be a fixed permanent structure or part of one;

(2) The proposed cosmetic establishment need not consist of a separate room or rooms, but may be a counter or other clearly identifiable portion of a room or floor;

(3) The proposed cosmetic establishment shall have, or have convenient access to, handwashing facilities; and

(4) The proposed cosmetic establishment, if located in a private dwelling, shall be located in a room or rooms separate from the living quarters and having a private entrance. Such room or rooms shall not be used for any residential purpose during the hours the cosmetic establishment is being used, and all doors and windows connecting to residential quarters shall be closed at such times.

Source: Laws 1986, LB 318, § 90; R.S.1943, (2003), § 71-3,129; Laws 2007, LB463, § 353. Operative date December 1, 2008.

38-1092 Cosmetic establishment license; application; procedure; additional information; inspection. (1) Any person seeking a license to operate a cosmetic establishment shall submit a completed application at least thirty days before the proposed opening of the cosmetic establishment for operation. Along with the application the applicant shall submit:

(a) A floor plan or blueprint sufficient to identify the location of the proposed cosmetic establishment within any larger structure and the location of handwashing facilities; and

(b) The names of all persons registered or proposed to be registered as cosmeticians to be employed in the cosmetic establishment.

(2) In the event that more than one counter or area within a larger commercial establishment will be used as a cosmetic establishment, only one license is required for all such counters or areas if all are identified on the floor plan or blueprint accompanying the application.

(3) Each application shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. In the event an application is approved, the department shall issue the applicant a certificate of consideration to operate a cosmetic establishment pending an operation inspection. The department shall conduct an operation inspection of each cosmetic establishment issued a certificate of consideration within six months of the issuance of such certificate. Cosmetic establishments passing the inspection shall be issued a permanent license. Cosmetic establishments failing the inspection shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the cosmetic establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1986, LB 318, § 91; R.S.1943, (2003), § 71-3,130; Laws 2007, LB463, § 354. Operative date December 1, 2008.

38-1093 Licensed cosmetic establishment; operating requirements. In order to maintain its license in good standing, each cosmetic establishment shall operate in accordance with the following requirements:

(1) The cosmetic establishment shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The owner of the cosmetic establishment or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week after a cosmetic establishment is permanently closed, except in emergency circumstances as determined by the department;

(3) No cosmetic establishment shall permit anyone other than a cosmetician, cosmetologist, or esthetician to apply cosmetics to members of the general public upon its premises;

(4) The cosmetic establishment shall display a sign at each counter or area used for such purposes indicating that it is a licensed cosmetic establishment and that all persons applying cosmetics are registered cosmeticians or licensed cosmetologists or estheticians;

(5) The cosmetic establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during normal operating hours, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas, personnel, and records requested by the inspector; and

(6) The cosmetic establishment shall display in a conspicuous place near the place where cosmetics are applied the following records:

(a) The current license or certificate of consideration to operate a cosmetic establishment;

(b) The current licenses or registrations of all persons applying cosmetics; and

(c) The rating sheet from the most recent operation inspection.

Source: Laws 1986, LB 318, § 92; R.S.1943, (2003), § 71-3,131; Laws 2007, LB463, § 355. Operative date December 1, 2008.

38-1094 Cosmetic establishment license; revoked or expired; effect. The license of a cosmetic establishment that has been revoked or expired for any reason may not be reinstated. An original application for licensure shall be submitted and approved before such cosmetic establishment may reopen for business.

Source: Laws 1986, LB 318, § 94; R.S.1943, (2003), § 71-3,133; Laws 2007, LB463, § 356. Operative date December 1, 2008.

38-1095 Cosmetic establishment license; change of ownership or location; effect. Each cosmetic establishment license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such cosmetic establishment may reopen for business. Nothing in sections 38-1091 to 38-1095 shall be construed to prevent the creation, alteration, removal, or movement of specific counters or areas within a commercial enterprise holding a license as a cosmetic establishment.

Source: Laws 1986, LB 318, § 95; R.S.1943, (2003), § 71-3,134; Laws 2007, LB463, § 357.
Operative date December 1, 2008.

38-1096 Cosmetic establishment owner; liability. The owner of each cosmetic establishment shall have full responsibility for ensuring that the cosmetic establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the cosmetic establishment.

Source: Laws 1986, LB 318, § 96; R.S.1943, (2003), § 71-3,135; Laws 2007, LB463, § 358.
Operative date December 1, 2008.

38-1097 School of cosmetology; license; requirements. In order to be licensed as a school of cosmetology by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least fifteen full-time students;

(3) The proposed school shall contain at least three thousand five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, esthetics salon, or nail technology salon.

A school of cosmetology is not required to be licensed as a school of esthetics in order to provide an esthetics training program or as a school of nail technology in order to provide a nail technology training program.

Source: Laws 1986, LB 318, § 97; Laws 2002, LB 241, § 33; R.S.1943, (2003), § 71-3,136; Laws 2007, LB463, § 359.
Operative date December 1, 2008.

38-1098 School of cosmetology license; school of esthetics license; application. Any person seeking a license to operate a school of cosmetology or school of esthetics shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before the proposed opening of the school.

Source: Laws 1986, LB 318, § 98; Laws 1995, LB 83, § 38; Laws 1997, LB 752, § 169; Laws 2002, LB 241, § 35; Laws 2004, LB 1005, § 31; R.S.Supp.,2006, § 71-3,137; Laws 2007, LB463, § 360.
Operative date December 1, 2008.

38-1099 School of cosmetology license; school of esthetics license; application; additional information. Along with the application the applicant for a license to operate a school of cosmetology or school of esthetics shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school rules and the student contract;

(5) A list of the names and credentials of all licensees to be employed by the school and the name and qualifications of the school manager;

(6) Complete student entrance notifications and contracts for all persons proposed as students or student instructors, which shall be submitted fifteen days prior to opening;

(7) A completed cosmetology education or esthetics education evaluation scale, as applicable; and

(8) A schedule of proposed hours of operation and class and course scheduling.

Source: Laws 1986, LB 318, § 99; Laws 2002, LB 241, § 36; R.S.1943, (2003), § 71-3,138; Laws 2007, LB463, § 361.
Operative date December 1, 2008.

38-10,100 School of esthetics license; application; additional information. In order to be licensed as a school of esthetics by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least four but not more than six students for each licensed esthetics instructor on the staff of the proposed school;

(3) The proposed school shall contain at least one thousand square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, an esthetics salon, or a nail technology salon.

Source: Laws 2002, LB 241, § 34; R.S.1943, (2003), § 71-3,138.02; Laws 2007, LB463, § 362.
Operative date December 1, 2008.

38-10,101 School of cosmetology license; school of esthetics license; application; review; procedure; inspection. Each application for a license to operate a school of cosmetology or school of esthetics shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is accepted, the department shall immediately conduct an accreditation inspection of the proposed school. A school passing the inspection shall be issued a license and may begin operation as soon as the inspection results are received. If the proposed school fails the inspection, the applicant shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days of receipt of evidence, the school does not receive a satisfactory rating, or if evidence is not received within fifteen days, the application may be denied.

Source: Laws 1986, LB 318, § 100; Laws 1995, LB 83, § 41; Laws 2002, LB 241, § 37; Laws 2004, LB 1005, § 32; R.S.Supp.,2006, § 71-3,139; Laws 2007, LB463, § 363.
Operative date December 1, 2008.

38-10,102 Licensed school; operating requirements. In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or the authorized agent thereof shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a student, student instructor, instructor, or guest artist to perform any of the practices of cosmetology or esthetics within its confines or employ, except that such restriction shall not prevent a school from inviting guest teachers who are not licensed or registered to provide lectures to students or student instructors if the guest lecturer does not perform any of the practices of cosmetology or esthetics;

(4) The school shall display a name upon or near the entrance door designating it as a school of cosmetology or a school of esthetics;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in cosmetology or esthetics, as applicable. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a school of cosmetology or school of esthetics;

(b) The current licenses or registrations of all persons, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No instructor or student instructor shall perform, and no school shall permit such person to perform, any of the practices of cosmetology or esthetics on the public in a school of cosmetology or school of esthetics other than that part of the practical work which pertains

directly to the teaching of practical subjects to students or student instructors and in no instance shall complete cosmetology or esthetics services be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student;

(16) The school shall maintain a report indicating the students and student instructors enrolled, the hours and credits earned, the instructors employed, the hours of operation, and such other pertinent information as required by the department. No hours or credits shall be allowed for any student unless such student is duly registered and the hours and credits are reported by the school; and

(17) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, or the rules and regulations adopted and promulgated under either act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1986, LB 318, § 101; Laws 1987, LB 543, § 20; Laws 1995, LB 83, § 42; Laws 2002, LB 241, § 38; Laws 2004, LB 1005, § 33; R.S.Supp.,2006, § 71-3,140; Laws 2007, LB463, § 364. Operative date December 1, 2008.

38-10,103 School or salon; operation; student; apprentice; student instructor; requirements. In order to maintain a school or salon license in good standing, each school or salon shall operate in accordance with the following:

(1) Every person accepted for enrollment as a standard student or apprentice shall show evidence that he or she attained the age of seventeen years on or before the date of his or her enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon, has completed the equivalent of a high school education, has been accepted for enrollment at a

school of cosmetology, a school of esthetics, or an apprentice salon, and has not undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice;

(2)(a) Every person accepted for enrollment as a special study student or apprentice shall show evidence that he or she:

(i) Has attained the age of seventeen years on or before the date of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon;

(ii) Has completed the tenth grade;

(iii) Has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon; and

(iv) Is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) An applicant for enrollment as a special study student or apprentice shall not have undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice.

(c) Special study students shall be limited to attending a school of cosmetology, a school of esthetics, or an apprentice salon for no more than eight hours per week during the school year;

(3) Every person accepted for enrollment as a student instructor shall show evidence of current licensure as a cosmetologist or esthetician in Nebraska and completion of formal education equivalent to a United States high school education; and

(4) No school of cosmetology, school of esthetics, or apprentice salon shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements. Proof of age shall consist of a birth certificate, baptismal certificate, or other equivalent document as determined by the department. Evidence of education shall consist of a high school diploma, general educational development certificate, transcript from a college or university, or equivalent document as determined by the department.

Source: Laws 1986, LB 318, § 63; Laws 1987, LB 543, § 11; Laws 1995, LB 83, § 31; Laws 2002, LB 241, § 26; Laws 2004, LB 1005, § 28; R.S.Supp.,2006, § 71-3,102; Laws 2007, LB463, § 365. Operative date December 1, 2008.

38-10,104 Licensed school; additional operating requirements. In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) All persons accepted for enrollment as students shall meet the qualifications established in section 38-10,103;

(2) The school shall, at all times the school is in operation, have at least one instructor in the school for each twenty students or fraction thereof enrolled in the school, except (a) that freshman and advanced students shall be taught by different instructors in separate classes and (b) as provided in section 38-10,100;

(3) The school shall not permit any student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the freshman

curriculum, except that the board may establish guidelines by which it may approve such practices as part of the freshman curriculum;

(4) No school shall pay direct compensation to any of its students. Student instructors may be paid as determined by the school;

(5) All students and student instructors shall be under the supervision of an instructor at all times, except that students shall be under the direct supervision of an instructor or student instructor at all times when cosmetology or esthetics services are being taught or performed and student instructors may independently supervise students after successfully completing at least one-half of the required instructor program;

(6) Students shall be classified for reporting purposes as follows:

(a) A full-time student shall mean one who regularly trains at least eight hours a day during the normal school week, including normal excused absences as defined in the school rules; and

(b) A part-time student shall mean any student not classified as a full-time student;

(7) Students no longer attending the school shall be classified for reporting purposes as follows:

(a) A graduate shall mean a student who has completed his or her hours and credits, has satisfied all school requirements, and has been granted a certificate or diploma by the school;

(b) A transfer shall mean a student who has transferred to another school in Nebraska or in another state;

(c) A temporary drop shall mean a student who has stopped attending school for a period of less than three months and has given no indication that he or she intends to drop permanently; and

(d) A permanent drop shall mean a student who has stopped attending school for a period of three months or more or one who has stopped attending for a shorter time but has informed the school in writing of his or her intention to drop permanently;

(8) Once a student has been classified as a permanent drop, the school shall keep a record of his or her hours and credits for a period of two years from the last date upon which the student attended school;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a student or student instructor with hours and credits except when such hours and credits were earned in the study or practice of cosmetology or esthetics in accordance with the required curriculum. Hours and credits shall be credited on a daily basis. Once credited, hours or credits cannot be removed or disallowed except by the department upon a finding that the hours or credits have been wrongfully allowed.

Source: Laws 1986, LB 318, § 102; Laws 1987, LB 543, § 21; Laws 1995, LB 83, § 43; Laws 2002, LB 241, § 39; Laws 2004, LB 1005, § 34; R.S.Supp.,2006, § 71-3,141; Laws 2007, LB463, § 366. Operative date December 1, 2008.

38-10,105 Intrastate transfer of cosmetology student; requirements. A student may transfer from one school of cosmetology in Nebraska to another at any time without penalty if all tuition obligations to the school from which the student is transferring have been honored

and if the student secures a letter from the school from which he or she is transferring stating that the student has not left any unfulfilled tuition obligations and stating the number of hours and credits earned by the student at such school, including any hours and credits the student transferred into that school, and the dates of attendance of the student at that school. The student may not begin training at the new school until such conditions have been fulfilled. The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, credit books and any and all records pertaining to the student.

Source: Laws 1986, LB 318, § 103; R.S.1943, (2003), § 71-3,142; Laws 2007, LB463, § 367.
Operative date December 1, 2008.

38-10,106 Interstate transfer of cosmetology student; requirements. Students may transfer into a school of cosmetology in Nebraska from a school in another state if:

(1) The school in the other state meets all requirements of section 38-10,104; and

(2) The student submits to the department evidence that the school from which he or she is transferring was fully accredited by the appropriate body in that state at the time the student attended.

Source: Laws 1986, LB 318, § 104; Laws 1987, LB 543, § 22; R.S.1943, (2003), § 71-3,143; Laws 2007, LB463, § 368.
Operative date December 1, 2008.

38-10,107 Licensed barber; waiver of course requirements; conditions. Any person holding a current barbering license issued by the appropriate authority in Nebraska shall be entitled to waive one thousand hours upon enrolling in a complete course of cosmetology training in a school of cosmetology. The school shall determine, based upon the knowledge and experience of the student, which one thousand hours of training shall be waived for the student. The school shall determine, based upon the knowledge and experience of the student, how many credits to waive and which credits are to be waived for the student, except that no fewer than five hundred credits and no more than one thousand credits may be waived for any such student. No hours shall be waived for a licensed barber enrolling in an esthetician training course or program.

Source: Laws 1986, LB 318, § 105; R.S.1943, (2003), § 71-3,144; Laws 2007, LB463, § 369.
Operative date December 1, 2008.

Cross Reference

Barbering license under the Barber Act, see section 71-224.

38-10,108 School of cosmetology; student instructors; limitation. No school of cosmetology shall at any time enroll more than two student instructors for each full-time instructor actively working in and employed by the school.

Source: Laws 1986, LB 318, § 107; R.S.1943, (2003), § 71-3,146; Laws 2007, LB463, § 370.
Operative date December 1, 2008.

38-10,109 School licenses; renewal; requirements; inactive status; revocation; effect. (1) The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the school of cosmetology or school of esthetics shall provide evidence of minimal property damage, bodily injury, and liability insurance coverage and shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

(2) Any school of cosmetology or school of esthetics which has current accreditation from a national accrediting organization approved by the board shall be considered to satisfy the accreditation requirements outlined in this section, except that successful completion of an operation inspection shall be required. Each school of cosmetology or school of esthetics, whether or not it is nationally accredited, shall satisfy all curriculum and sanitation requirements outlined in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to maintain its license.

(3) Any school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months of the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1986, LB 318, § 108; Laws 1995, LB 83, § 45; Laws 2002, LB 241, § 41; Laws 2003, LB 242, § 88; Laws 2004, LB 1005, § 36; R.S.1943, (2003), § 71-3,147; Laws 2007, LB463, § 371. Operative date December 1, 2008.

38-10,110 School license; change of ownership or location; effect. Each school license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or change in the county of location. An original application for licensure shall be submitted and approved before such school may reopen, except that a school moving to a new location within the same county may do so by filing an application as required by the department, paying the required fee, submitting a new floor plan, and passing an operation inspection. Materials shall be received by the department no less than thirty days prior to the move, and all provisions of this section shall be complied with before the school may begin operation at its new location.

Source: Laws 1986, LB 318, § 109; R.S.1943, (2003), § 71-3,148; Laws 2007, LB463, § 372. Operative date December 1, 2008.

38-10,111 School of cosmetology; satellite classroom; license; requirements; waiver. Any school of cosmetology may apply to the department for a license to operate a satellite classroom. A satellite classroom shall be subject to all requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and rules and regulations adopted and promulgated under such act, except as follows:

(1) A satellite classroom shall consist of classroom facilities only, and no clinical activities may be performed thereat. A satellite classroom shall contain a minimum of four hundred square feet of floor space;

(2) Students located at a satellite classroom may move to the home school, or vice versa, without being considered transfer students;

(3) Students in a satellite classroom shall be maintained on the same monthly report form as students in the home school; and

(4) No satellite classroom may operate in any manner unless the home school is at the time operating and possesses a full active license, except a satellite classroom may keep different days and hours of operation from those of its home school. The license to operate a satellite classroom shall be revoked or shall expire at the same time as that for its home school.

The department, with the recommendation of the board, may adopt and promulgate rules and regulations to modify or waive any of the operating or student requirements of a school of cosmetology for a satellite classroom if the department determines that such requirements are not applicable or appropriate to a satellite classroom.

Source: Laws 1986, LB 318, § 110; R.S.1943, (2003), § 71-3,149; Laws 2007, LB463, § 373. Operative date December 1, 2008.

38-10,112 School; owner; liability; manager required. The owner of each school of cosmetology or school of esthetics shall have full responsibility for ensuring that the school is operated in compliance with all applicable laws and rules and regulations and shall be liable for any and all violations occurring in the school. Each school of cosmetology shall be operated by a manager who shall hold an active instructor's license and who shall be present on the premises of the school no less than thirty-five hours each week. Each manager of a school of esthetics shall hold an active esthetics instructor's license and shall be present on the premises of the school no less than thirty-five hours each week. The manager may have responsibility for the daily operation of the school or satellite classroom and, if so, shall share with the owner liability for any and all violations occurring in the school or satellite classroom.

Source: Laws 1986, LB 318, § 111; Laws 1995, LB 83, § 46; Laws 2002, LB 241, § 42; Laws 2004, LB 1005, § 37; R.S.Supp.,2006, § 71-3,150; Laws 2007, LB463, § 374. Operative date December 1, 2008.

38-10,113 Apprentice salon; license; requirements. In order to be licensed as an apprentice salon by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed apprentice salon shall hold a current active license as a cosmetology salon or esthetics salon;

(2) The proposed apprentice salon shall employ or plan to employ one active instructor for each two apprentices or fraction thereof it enrolls; and

(3) The proposed apprentice salon shall provide an area of not less than one hundred square feet to be used solely for educational purposes.

Source: Laws 1986, LB 318, § 112; Laws 2002, LB 241, § 43; R.S.1943, (2003), § 71-3,151; Laws 2007, LB463, § 375.
Operative date December 1, 2008.

38-10,114 Apprentice salon license; application; procedure; additional information. Any person seeking a license to operate an apprentice salon shall submit a complete application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before training of apprentices is scheduled to begin. Along with the application the applicant shall submit:

(1) A detailed floor plan or blueprint of the proposed apprentice salon sufficient to demonstrate compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(2) Evidence of minimal property damage, bodily injury, and liability insurance coverage;

(3) A list of the names and qualifications of all instructors employed or proposed to be employed;

(4) Completed enrollment forms for all apprentices proposed to be enrolled;

(5) A copy of the rules the salon proposes to use for its apprentices;

(6) A copy of the apprentice contract;

(7) A copy of the curriculum proposed to be used;

(8) A proposed schedule of training for each apprentice; and

(9) A completed cosmetology education evaluation scale.

Source: Laws 1986, LB 318, § 113; Laws 1997, LB 752, § 171; R.S.1943, (2003), § 71-3,152; Laws 2007, LB463, § 376.
Operative date December 1, 2008.

38-10,115 Apprentice salon license; application; review; procedure; inspection. Each application for a license to operate an apprentice salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. In the event an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice further applications by the applicant. In the event an application is approved, the department shall immediately conduct an operation inspection of the proposed apprentice salon. A salon passing the inspection shall be issued a license to operate and may begin training apprentices upon receipt of notification to such effect. A salon failing the operation inspection shall submit, within fifteen days, evidence of corrective action to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days of receipt of evidence, the salon does not receive a satisfactory rating, or if evidence is not submitted within fifteen days, the application may be denied.

Source: Laws 1986, LB 318, § 114; R.S.1943, (2003), § 71-3,153; Laws 2007, LB463, § 377.
Operative date December 1, 2008.

38-10,116 Licensed apprentice salon; operating requirements. In order to maintain and renew its license in good standing, each apprentice salon shall operate in accordance with the following requirements:

(1) The apprentice salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon shall maintain its salon license in good standing; and

(3) The salon shall operate in accordance with all operating requirements and all student requirements of a school of cosmetology or school of esthetics, except that the department, with the recommendation of the board, may adopt and promulgate rules and regulations to modify or waive any such requirements that are deemed not applicable to an apprentice salon.

Source: Laws 1986, LB 318, § 115; Laws 2002, LB 241, § 44; R.S.1943, (2003), § 71-3,154; Laws 2007, LB463, § 378.
Operative date December 1, 2008.

38-10,117 Apprentice salon license; revocation or expiration; effect. The license of an apprentice salon that has been revoked or expired for any reason may not be reinstated. An original application for licensure shall be submitted and approved before such apprentice salon may accept apprentices for training.

Source: Laws 1986, LB 318, § 117; R.S.1943, (2003), § 71-3,156; Laws 2007, LB463, § 379.
Operative date December 1, 2008.

38-10,118 Apprentice salon license; change of ownership or location; effect. Each apprentice salon license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such apprentice salon may accept apprentices for training.

Source: Laws 1986, LB 318, § 118; R.S.1943, (2003), § 71-3,157; Laws 2007, LB463, § 380.
Operative date December 1, 2008.

38-10,119 Apprentice salon; owner liability. The owner of each apprentice salon shall have full responsibility for ensuring that the apprentice salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the apprentice salon.

Source: Laws 1986, LB 318, § 119; R.S.1943, (2003), § 71-3,158; Laws 2007, LB463, § 381.
Operative date December 1, 2008.

38-10,120 Practice outside licensed establishment; when permitted; home services permit; issuance. (1) Practice outside a licensed cosmetology establishment shall be permitted in the following circumstances:

(a) A registered cosmetician may apply cosmetics or esthetics products within the scope of such activity permitted a cosmetician in the home of a client or customer; and

(b) A licensed cosmetology salon or esthetics salon may employ licensed cosmetologists and estheticians, according to the licensed activities of the salon, to perform home services by meeting the following requirements:

(i) In order to be issued a home services permit by the department, an applicant shall hold a current active salon license; and

(ii) Any person seeking a home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of liability insurance or bonding.

(2) The department shall issue a home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1986, LB 318, § 120; Laws 1995, LB 83, § 47; Laws 2002, LB 241, § 46; R.S.1943, (2003), § 71-3,159; Laws 2007, LB463, § 382.
Operative date December 1, 2008.

38-10,121 Home services permit; requirements. In order to maintain in good standing or renew its home services permit, a salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1) Clients receiving home services shall be in emergency circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities. Emergency circumstances may include such conditions or situations as:

(a) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(b) Extreme general infirmity such as that associated with the aging process;

(c) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(d) Having sole responsibility for the care of an invalid dependent requiring constant attention; or

(e) Any other conditions that, in the opinion of the department, meet the general definition of emergency circumstances;

(2) The salon shall determine that each person receiving home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home services or to whom it has provided such services within the past two years;

(3) The salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each salon providing home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1986, LB 318, § 121; Laws 1995, LB 83, § 48; R.S.1943, (2003), § 71-3,160; Laws 2007, LB463, § 383.
Operative date December 1, 2008.

38-10,122 Home services; inspections. Agents of the department may make operation inspections in the homes of clients if such inspections are limited to the activities, procedures, and materials of the licensee providing home services.

Source: Laws 1986, LB 318, § 122; R.S.1943, (2003), § 71-3,161; Laws 2007, LB463, § 384.
Operative date December 1, 2008.

38-10,123 Home services; requirements. No licensee may perform home services except when employed by or under contract to a salon holding a valid home services permit.

Source: Laws 1986, LB 318, § 123; Laws 1987, LB 543, § 23; Laws 1995, LB 83, § 49; R.S.1943, (2003), § 71-3,162; Laws 2007, LB463, § 385.
Operative date December 1, 2008.

38-10,124 Home services permit; renewal; revocation or expiration; effect. Each home services permit shall be subject to renewal at the same time as the salon license and shall be renewed upon request of the permitholder if the salon is operating its home services in compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and if the salon license is renewed. No permit that has been revoked or expired may be reinstated or transferred to another owner or location.

Source: Laws 1986, LB 318, § 124; Laws 1995, LB 83, § 50; R.S.1943, (2003), § 71-3,163; Laws 2007, LB463, § 386.
Operative date December 1, 2008.

38-10,125 Home services permit; owner; liability. The owner of each salon holding a home services permit shall have full responsibility for ensuring that the home services are provided in compliance with all applicable laws and rules and regulations and shall be liable for any violations which occur.

Source: Laws 1986, LB 318, § 125; Laws 1995, LB 83, § 51; R.S.1943, (2003), § 71-3,164; Laws 2007, LB463, § 387.
Operative date December 1, 2008.

38-10,126 Nail technology activities; licensure required. Licensure shall be required before any person may engage in the full, unsupervised practice of nail technology. No person may assume the title of nail technician or nail technology instructor without first being licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body

Art Practice Act. No person, group, company, or other entity shall operate, advertise, or hold himself, herself, or itself out as operating a nail technology establishment in which any of the practices of nail technology are carried out unless such nail technology establishment is licensed under the act. No person shall provide nail technology services unless he or she practices in a currently licensed cosmetology establishment or nail technology establishment.

Source: Laws 1999, LB 68, § 28; R.S.1943, (2003), § 71-3,180; Laws 2007, LB463, § 388. Operative date December 1, 2008.

38-10,127 Nail technology activities; enumerated. No person, group, company, limited liability company, or other entity shall engage in any of the following acts without being licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by the act:

(1) Performing or advertising or holding oneself out as performing or qualified to perform any of the practices of nail technology;

(2) Teaching or advertising or holding oneself out as teaching or qualified to teach any of the practices of nail technology; or

(3) Operating or advertising or holding oneself out as operating an establishment in which any of the practices of nail technology are performed or taught.

Source: Laws 1999, LB 68, § 29; R.S.1943, (2003), § 71-3,181; Laws 2007, LB463, § 389. Operative date December 1, 2008.

38-10,128 Nail technician or instructor; licensure by examination; requirements. In order to be licensed as a nail technician or nail technology instructor by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) He or she has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) He or she has completed formal education equivalent to a United States high school education;

(3) He or she possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(4) He or she has graduated from a school of cosmetology or nail technology school providing a nail technology program. Evidence of graduation shall include documentation of the total number of hours of training earned and a diploma or certificate from the school to the effect that the applicant has complied with the following:

(a) For licensure as a nail technician, the program of studies shall consist of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board; and

(b) For licensure as a nail technology instructor, the program of studies shall consist of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, beyond the program of studies required for licensure as a nail technician

and the individual shall be currently licensed as a nail technician in Nebraska as evidenced by possession of a valid Nebraska nail technician license.

The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Source: Laws 1999, LB 68, § 31; R.S.1943, (2003), § 71-3,183; Laws 2007, LB463, § 390.
Operative date December 1, 2008.

38-10,129 Application for nail technology licensure or registration; procedure. No application for any type of licensure or registration shall be considered complete unless all information requested on the application form has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1999, LB 68, § 32; Laws 2003, LB 242, § 91; R.S.1943, (2003), § 71-3,184; Laws 2007, LB463, § 391.
Operative date December 1, 2008.

38-10,130 Licensure; examinations; duties; examinees. The board shall approve and the department shall cause examinations to be administered as required for licensure in nail technology under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of establishing the possession of minimum competency in the knowledge and skills required on the part of the applicant.

Source: Laws 1999, LB 68, § 34; R.S.1943, (2003), § 71-3,186; Laws 2007, LB463, § 392.
Operative date December 1, 2008.

38-10,131 Examinations; requirements; grades. (1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in nail technology programs.

(2) At least two examinations shall be given annually.

(3) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination.

Source: Laws 1999, LB 68, § 35; R.S.1943, (2003), § 71-3,187; Laws 2007, LB463, § 393.
Operative date December 1, 2008.

38-10,132 Nail technician or instructor; reciprocity; requirements. The department may grant a license based on licensure in another jurisdiction to a nail technician or nail technology instructor who presents proof of the following:

(1) He or she has attained the age of seventeen years;

(2) He or she has completed formal education equivalent to a United States high school education;

(3) He or she is currently licensed as a nail technician or its equivalent or as a nail technology instructor or its equivalent in another jurisdiction and he or she has never been disciplined or had his or her license revoked;

(4) For licensure as a nail technician, evidence of:

(a) Completion of a program of nail technician studies consisting of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, and successful passage of a written examination. If a written examination was not required for licensure in another jurisdiction, the applicant must take the Nebraska written examination; or

(b) At least twelve months of practice as a nail technician following issuance of such license in another jurisdiction; and

(5) For licensure as a nail technology instructor, evidence of:

(a) Completion of a program of studies consisting of a minimum of not less than one hundred fifty hours and not more than three hundred hours, as set by the board, beyond the program of studies required for licensure in another jurisdiction as a nail technician, successful passage of a written examination, and current licensure as a nail technician in Nebraska as evidenced by possessing a valid Nebraska nail technician license. If a written examination was not required for licensure as a nail technology instructor, the applicant must take the Nebraska written examination; or

(b) At least twelve months of practice as a nail technology instructor following issuance of such license in another jurisdiction.

Source: Laws 1999, LB 68, § 39; R.S.1943, (2003), § 71-3,191; Laws 2007, LB463, § 394. Operative date December 1, 2008.

38-10,133 Nail technology license or registration; display. Every person holding a license or registration in nail technology issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place of employment, and every nail technology establishment shall so display the then current licenses and registrations of all practitioners there employed.

Source: Laws 1999, LB 68, § 40; R.S.1943, (2003), § 71-3,192; Laws 2007, LB463, § 395. Operative date December 1, 2008.

38-10,134 Nail technology temporary practitioner; licensure required. Licensure shall be required before any person may act as a nail technology temporary practitioner, and no person shall assume such title without first being licensed by the department under section 38-10,135.

Source: Laws 1999, LB 68, § 41; R.S.1943, (2003), § 71-3,193; Laws 2007, LB463, § 396. Operative date December 1, 2008.

38-10,135 Nail technology temporary practitioner; application; qualifications. An applicant for licensure as a nail technology temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department,

that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed nail technology or cosmetology establishment under the supervision of a licensed nail technician or licensed cosmetologist. An individual registered as a temporary practitioner on December 1, 2008, shall be deemed to be licensed as a temporary practitioner under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act on such date. The temporary practitioner may continue to practice under such registration as a license until it would have expired under its terms.

Source: Laws 1999, LB 68, § 42; R.S.1943, (2003), § 71-3,194; Laws 2007, LB463, § 397.
Operative date December 1, 2008.

38-10,136 Nail technology temporary practitioner; expiration of license; extension. A license as a nail technology temporary practitioner shall be granted for a set period of time and cannot be renewed. The license shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first. The license of a temporary practitioner who fails to take the first scheduled examination shall expire immediately unless the department finds that the temporary practitioner was unable to attend the examination due to an emergency or other valid circumstances. If the department so finds, it may extend the license for an additional eight weeks or until receipt of the examination results, whichever occurs first. No license may be extended in such manner more than once for each temporary practitioner.

Source: Laws 1999, LB 68, § 43; R.S.1943, (2003), § 71-3,195; Laws 2007, LB463, § 398.
Operative date December 1, 2008.

38-10,137 Continuing competency; limited exemption. The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, a nail technology instructor who meets the continuing competency requirements for the nail technology instructor's license shall be exempt from meeting the continuing competency requirements for his or her nail technician license for that biennium.

Source: Laws 1999, LB 68, § 55; Laws 2002, LB 1021, § 53; R.S.1943, (2003), § 71-3,206; Laws 2007, LB463, § 399.
Operative date December 1, 2008.

38-10,138 Nail technology establishment; license required. No person shall operate or profess or attempt to operate a nail technology establishment unless such establishment is licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. The department shall not issue or renew a license for a nail technology establishment until all requirements of the act have been complied with. No person

shall engage in any of the practices of nail technology in any location or premises other than a licensed nail technology or cosmetology establishment except as specifically permitted in the act.

Source: Laws 1999, LB 68, § 57; R.S.1943, (2003), § 71-3,208; Laws 2007, LB463, § 400. Operative date December 1, 2008.

38-10,139 Nail technology salon; license; requirements. In order to be licensed as a nail technology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed nail technology salon shall be a fixed, permanent structure or part of one;

(2) The proposed nail technology salon shall be physically separated from all other business or residential activities except cosmetology, barbering, manicuring, pedicuring, and retail sales;

(3) The separation required in subdivision (2) of this section shall be by fixed walls or by partitions not less than six feet high;

(4) All areas of the nail technology salon, including those used for manicuring, pedicuring, or retail sales, shall comply with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(5) A nail technology salon located in a residence shall be entirely distinct and separate from any living quarters, except that there may be one connecting door to the living portion of the dwelling as an access entrance to the salon for the owner or operator, but such entrance shall not be for the use of the general public;

(6) The entrance into the proposed nail technology salon used by the general public shall lead directly from the outside to the salon, except that a salon located in a commercial building may have its entrance open from a public area such as a foyer, hallway, mall, concourse, or retail sales floor. The requirements of this subdivision do not apply to nail salons located within licensed cosmetology salons;

(7) The proposed nail technology salon shall have at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner, except that a salon employing a licensee exclusively to perform home services need not provide additional space for such employee;

(8) The proposed nail technology salon shall include toilet facilities unless the salon is located in a commercial building in which public toilet facilities are available that open directly off of a public area;

(9) The proposed nail technology salon shall have handwashing facilities within the salon; and

(10) The proposed nail technology salon shall meet all state or local building code and fire code requirements.

Source: Laws 1999, LB 68, § 59; R.S.1943, (2003), § 71-3,210; Laws 2007, LB463, § 401. Operative date December 1, 2008.

38-10,140 Nail technology salon; license application. Any person seeking a license to operate a nail technology salon shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be submitted at least thirty days before the proposed opening of the salon for operation. Along with the application the applicant shall submit:

(1) A detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,139; and

(2) Evidence of minimal property damage, bodily injury, and liability insurance coverage for the proposed salon.

Source: Laws 1999, LB 68, § 60; R.S.1943, (2003), § 71-3,211; Laws 2007, LB463, § 402. Operative date December 1, 2008.

38-10,141 Nail technology salon; application; review; certificate of consideration; inspection. Each application for a license to operate a nail technology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. Salons passing the inspection shall be issued a permanent license. Salons failing the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 1999, LB 68, § 61; R.S.1943, (2003), § 71-3,212; Laws 2007, LB463, § 403. Operative date December 1, 2008.

38-10,142 Nail technology salon; operating requirements. In order to maintain its license in good standing, each nail technology salon shall operate in accordance with the following requirements:

(1) The nail technology salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The nail technology salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least one week prior to closure, except in emergency circumstances as determined by the department;

(3) No nail technology salon shall permit any unlicensed or unregistered person to perform any of the practices of nail technology within its confines or employment;

(4) The nail technology salon shall display a name upon, over, or near the entrance door distinguishing it as a nail technology salon;

(5) The nail technology salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the nail technology salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the nail technology salon, all personnel, and all records requested by the inspector;

(6) The nail technology salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a nail technology salon;

(b) The current licenses or registrations of all persons employed by or working in the nail technology salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a nail technology salon employ more employees than permitted by the square footage requirements of the act; and

(8) The nail technology salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 1999, LB 68, § 62; R.S.1943, (2003), § 71-3,213; Laws 2007, LB463, § 404.
Operative date December 1, 2008.

38-10,143 Nail technology salon license; renewal; insurance. The procedure for renewing a nail technology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage.

Source: Laws 1999, LB 68, § 63; Laws 2003, LB 242, § 94; R.S.1943, (2003), § 71-3,214; Laws 2007, LB463, § 405.
Operative date December 1, 2008.

38-10,144 Nail technology salon license; revoked or expired; effect. A nail technology salon license that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1999, LB 68, § 64; R.S.1943, (2003), § 71-3,215; Laws 2007, LB463, § 406.
Operative date December 1, 2008.

38-10,145 Nail technology salon license; change of ownership or location; effect. Each nail technology salon license issued shall be in effect solely for the owner or owners and premises named on the license and shall expire automatically upon any change of ownership or location. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 1999, LB 68, § 65; R.S.1943, (2003), § 71-3,216; Laws 2007, LB463, § 407.
Operative date December 1, 2008.

38-10,146 Nail technology salon owner; responsibilities. The owner of each nail technology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 1999, LB 68, § 66; R.S.1943, (2003), § 71-3,217; Laws 2007, LB463, § 408. Operative date December 1, 2008.

38-10,147 Nail technology school; license; requirements. In order to be licensed as a nail technology school by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed school shall be a fixed, permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of students;

(3) The proposed school shall contain at least five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon or nail technology salon.

Source: Laws 1999, LB 68, § 67; R.S.1943, (2003), § 71-3,218; Laws 2007, LB463, § 409. Operative date December 1, 2008.

38-10,148 School of cosmetology; exempt. A licensed school of cosmetology is not required to be licensed as a nail technology school in order to provide a nail technology program.

Source: Laws 1999, LB 68, § 68; R.S.1943, (2003), § 71-3,219; Laws 2007, LB463, § 410. Operative date December 1, 2008.

38-10,149 Nail technology school; license; application. Any person seeking a license to operate a nail technology school shall submit a completed application at least thirty days before construction or remodeling of the building proposed for use is scheduled to begin. If no construction or remodeling is planned, the application shall be received at least thirty days before the proposed opening of the school.

Source: Laws 1999, LB 68, § 69; R.S.1943, (2003), § 71-3,220; Laws 2007, LB463, § 411. Operative date December 1, 2008.

38-10,150 Nail technology school; license; application; requirements. Along with the application, an applicant for a license to operate a nail technology school shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school rules and the student contract;

(5) A list of the names and credentials of all persons licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to be employed by the school and the name and qualifications of the school manager;

(6) A completed nail technology education evaluation scale;

(7) A schedule of proposed hours of operation and class and course scheduling; and

(8) Any additional information the department may require.

A nail technology school's license shall be valid only for the location named in the application. When a school desires to change locations, it shall comply with section 38-10,158.

Source: Laws 1999, LB 68, § 70; Laws 2003, LB 242, § 95; R.S.1943, (2003), § 71-3,221; Laws 2007, LB463, § 412.
Operative date December 1, 2008.

38-10,151 Nail technology school; application; review; inspection. Each application for a license to operate a nail technology school shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial and such denial shall not prejudice future applications by the applicant. If an application is accepted, the department shall immediately conduct an accreditation inspection of the proposed school. A school passing the inspection shall be issued a license and may begin operation as soon as the inspection results are received. If the proposed school fails the inspection, the applicant shall submit, within fifteen days, evidence of corrective action taken to improve those aspects of operation found deficient. If, after a second inspection to be conducted within thirty days after receipt of evidence, the school does not receive a satisfactory rating, or if evidence is not received within fifteen days, the application may be denied.

Source: Laws 1999, LB 68, § 71; R.S.1943, (2003), § 71-3,222; Laws 2007, LB463, § 413.
Operative date December 1, 2008.

38-10,152 Nail technology school; operating requirements. In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or their authorized agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a nail technology student, nail technology student instructor, or nail technology instructor to perform any of the practices of nail technology within its confines or employ, except that such restriction shall not prevent a

school from inviting guest teachers who are not licensed or registered to provide lectures to students or student instructors if the guest lecturer does not perform any of the practices of nail technology;

(4) The school shall display a name upon or near the entrance door designating it as a nail technology school;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in nail technology. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a nail technology school;

(b) The current licenses or registrations of all persons licensed or registered under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No nail technology instructor or nail technology student instructor shall perform, and no school shall permit such person to perform, any of the practices of nail technology on the public in a nail technology school other than that part of the practical work which pertains directly to the teaching of practical subjects to nail technology students or nail technology student instructors, and complete nail technology services shall not be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student; and

(16) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the act or with the rules and regulations adopted and promulgated under such act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1999, LB 68, § 72; R.S.1943, (2003), § 71-3,223; Laws 2007, LB463, § 414. Operative date December 1, 2008.

38-10,153 Nail technology school; students; requirements. In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) Every person accepted for enrollment as a standard student shall meet the following qualifications:

(a) He or she has attained the age of seventeen years on or before the date of his or her enrollment in a nail technology school;

(b) He or she has completed the equivalent of a high school education; and

(c) He or she has not undertaken any training in nail technology in this state after January 1, 2000, without being enrolled as a nail technology student;

(2)(a) Every person accepted for enrollment as a special study nail technology student shall meet the following requirements:

(i) He or she has attained the age of seventeen years on or before the date of enrollment in a nail technology school;

(ii) He or she has completed the tenth grade; and

(iii) He or she is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) Special study nail technology students shall be limited to attending a nail technology school for no more than eight hours per week during the school year;

(3) Proof of age shall consist of a birth certificate, baptismal certificate, or other equivalent document as determined by the department. Evidence of education shall consist of a high school diploma, general educational development certificate, transcript from a college or university, or equivalent document as determined by the department. No nail technology school shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements for registration;

(4) Every person accepted for enrollment as a nail technology student instructor shall show evidence of current licensure as a nail technician in Nebraska and completion of formal education equivalent to a United States high school education;

(5) The school shall, at all times the school is in operation, have at least one nail technology instructor in the school for each twenty students or fraction thereof enrolled in the school;

(6) The school shall not permit any nail technology student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the beginning curriculum, except that the department may establish guidelines by which it may approve such practices as part of the beginning curriculum;

(7) No school shall pay direct compensation to any of its nail technology students. Nail technology student instructors may be paid as determined by the school;

(8) All nail technology students and nail technology student instructors shall be under the supervision of a cosmetology instructor, nail technology instructor, or nail technology student instructor at all times when nail technology services are being taught or performed;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a nail technology student or nail technology student instructor with hours except when such hours were earned in the study or practice of nail technology in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1999, LB 68, § 73; Laws 2001, LB 209, § 17; R.S.1943, (2003), § 71-3,224; Laws 2007, LB463, § 415.
Operative date December 1, 2008.

38-10,154 Nail technology school; instate transfer of students. Nail technology students or nail technology student instructors may transfer from one nail technology school in Nebraska to another at any time.

The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, any and all records pertaining to the student.

Source: Laws 1999, LB 68, § 74; R.S.1943, (2003), § 71-3,225; Laws 2007, LB463, § 416.
Operative date December 1, 2008.

38-10,155 Nail technology school; out-of-state transfer of students. Nail technology students or nail technology student instructors may transfer into a nail technology school in Nebraska from a school in another state if:

(1) The school in the other state meets all requirements of section 38-10,153; and

(2) The student submits to the department evidence that the school from which he or she is transferring was fully accredited by the appropriate body in that state at the time the student attended.

Source: Laws 1999, LB 68, § 75; R.S.1943, (2003), § 71-3,226; Laws 2007, LB463, § 417.
Operative date December 1, 2008.

38-10,156 Nail technology school; student instructor limit. No nail technology school shall at any time enroll more than one nail technology student instructor for each

full-time nail technology instructor or cosmetology instructor actively working in and employed by the school.

Source: Laws 1999, LB 68, § 76; R.S.1943, (2003), § 71-3,227; Laws 2007, LB463, § 418.
Operative date December 1, 2008.

38-10,157 Nail technology school license; renewal; inactive status. The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the nail technology school shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

Any nail technology school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months after the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1999, LB 68, § 77; Laws 2003, LB 242, § 96; R.S.1943, (2003), § 71-3,228; Laws 2007, LB463, § 419.
Operative date December 1, 2008.

38-10,158 Nail technology school; change of ownership or location; effect. Each nail technology school license issued shall be in effect solely for the owner or owners and premises named thereon and shall expire automatically upon any change of ownership or change in the county of location. An original application for licensure shall be submitted and approved before such school may reopen, except that a school moving to a new location within the same county may do so by filing an application as required by the department, paying the required fee, submitting a new floor plan, and passing an operation inspection. Materials shall be received by the department no less than thirty days prior to the move, and all provisions of this section shall be complied with before the school may begin operation at its new location.

Source: Laws 1999, LB 68, § 78; R.S.1943, (2003), § 71-3,229; Laws 2007, LB463, § 420.
Operative date December 1, 2008.

38-10,159 Nail technology home services permit. A licensed nail technology salon may employ licensed nail technicians to perform nail technology home services by meeting the following requirements:

(1) In order to be issued a nail technology home services permit by the department, an applicant shall hold a current active cosmetology salon license or nail technology salon license; and

(2) Any person seeking a nail technology home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of application for liability insurance or bonding.

The department shall issue a nail technology home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1999, LB 68, § 79; R.S.1943, (2003), § 71-3,230; Laws 2007, LB463, § 421. Operative date December 1, 2008.

38-10,160 Nail technology home services permit; salon operating requirements. In order to maintain in good standing or renew its nail technology home services permit, a nail technology salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1) Clients receiving nail technology home services shall be in emergency circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities. Emergency circumstances may include such conditions or situations as:

(a) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(b) Extreme general infirmity such as that associated with the aging process;

(c) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(d) Having sole responsibility for the care of an invalid dependent requiring constant attention; or

(e) Any other conditions that, in the opinion of the department, meet the general definition of emergency circumstances;

(2) The nail technology salon shall determine that each person receiving nail technology home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before nail technology home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with nail technology home services or to whom it has provided such services within the past two years;

(3) The nail technology salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide nail technology home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each nail technology salon providing nail technology home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1999, LB 68, § 80; R.S.1943, (2003), § 71-3,231; Laws 2007, LB463, § 422. Operative date December 1, 2008.

38-10,161 Nail technology home services; inspections. Agents of the department may make operation inspections in the homes of clients if such inspections are limited to the activities, procedures, and materials of the licensee providing nail technology home services.

Source: Laws 1999, LB 68, § 81; R.S.1943, (2003), § 71-3,232; Laws 2007, LB463, § 423. Operative date December 1, 2008.

38-10,162 Nail technology home services; performed by licensee. No licensee may perform nail technology home services except when employed by or under contract to a nail technology salon holding a valid nail technology home services permit.

Source: Laws 1999, LB 68, § 82; R.S.1943, (2003), § 71-3,233; Laws 2007, LB463, § 424. Operative date December 1, 2008.

38-10,163 Nail technology home services permit; renewal. Each nail technology home services permit shall be subject to renewal at the same time as the nail technology salon license and shall be renewed upon request of the permitholder if the salon is operating its nail technology home services in compliance with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and if the salon license is renewed. No permit that has been revoked or expired may be reinstated or transferred to another owner or location.

Source: Laws 1999, LB 68, § 83; R.S.1943, (2003), § 71-3,234; Laws 2007, LB463, § 425. Operative date December 1, 2008.

38-10,164 Nail technology home services permit; owner; responsibility. The owner of each salon holding a nail technology home services permit shall have full responsibility for ensuring that the nail technology home services are provided in compliance with all applicable laws and rules and regulations and shall be liable for any violations which occur.

Source: Laws 1999, LB 68, § 84; R.S.1943, (2003), § 71-3,235; Laws 2007, LB463, § 426. Operative date December 1, 2008.

38-10,165 Body art; consent required; when; violation; penalty. No person shall perform body art on or to any person under eighteen years of age without the prior written consent of the parent or court-appointed guardian of such person. The person giving such consent must be present during the procedure. A copy of such consent shall be retained for a period of five years by the person performing such body art. Nothing in this section shall be construed to require the performance of body art on a person under eighteen years of age. Violation of this section is a Class III misdemeanor.

Source: Laws 2004, LB 906, § 34; R.S.Supp.,2006, § 71-3,236; Laws 2007, LB463, § 427. Operative date December 1, 2008.

38-10,166 Body art; act, how construed. Nothing in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall be construed to authorize a person performing body art to engage in the practice of medicine and surgery.

Source: Laws 2004, LB 906, § 35; R.S.Supp.,2006, § 71-3,237; Laws 2007, LB463, § 428. Operative date December 1, 2008.

38-10,167 Ordinances governing body art; authorized. The licensure of persons performing body art or operating a body art facility under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall not be construed to restrict or prohibit a governing body of a county, city, or village from providing further requirements for performing body art or operating a body art facility within its jurisdiction under ordinances at least as stringent as, or more stringent than, the regulations of the act.

Source: Laws 2004, LB 906, § 36; R.S.Supp.,2006, § 71-3,238; Laws 2007, LB463, § 429.
Operative date December 1, 2008.

38-10,168 Fees. The department shall establish and collect fees for credentialing under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 430.
Operative date December 1, 2008.

38-10,169 Department; conduct inspections; types; rules and regulations; manner conducted. (1) The department shall conduct inspections as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. Two types of inspections shall be conducted which shall be known as operation inspections and accreditation inspections. An operation inspection shall be conducted to ascertain that an establishment or a facility is operating in full compliance with all laws, rules, and regulations. An accreditation inspection shall be conducted to accomplish the purposes of an operation inspection and to ascertain that a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon is maintaining academic standards and requirements of a quality consistent with the purpose of the act. All accreditation inspections shall be announced at least two weeks prior to the actual inspection.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the standards and criteria to be used in the conduct of inspections, the rating system to be used, and the level of achievement necessary to receive a passing grade.

(3) Operation inspections shall be unannounced and shall be conducted during the normal working hours of the establishment or facility.

(4) At the conclusion of the inspection, the owner or manager of the establishment or facility shall receive a copy of the rating form, which form shall be promptly displayed, and a statement of any deficiencies noted.

Source: Laws 1986, LB 318, § 130; Laws 1995, LB 83, § 52; Laws 1999, LB 68, § 85; Laws 2002, LB 241, § 47; Laws 2004, LB 906, § 29; Laws 2004, LB 1005, § 38; R.S.Supp.,2006, § 71-3,169; Laws 2007, LB463, § 431.
Operative date December 1, 2008.

38-10,170 Inspection; unsatisfactory rating; effect. If a cosmetology establishment, a nail technology establishment, or a body art facility receives a rating of unsatisfactory, it

shall submit evidence to the department within fifteen days providing proof of corrective action taken. A repeat inspection shall be conducted within sixty days after the original inspection to determine if corrective action has occurred. The department may assess a fee for each repeat inspection required. If the establishment or facility receives an unsatisfactory rating on the repeat inspection, the establishment shall be fined as determined by the department by rule and regulation. If the establishment or facility receives an unsatisfactory rating after the second unsatisfactory inspection or fails to pay the fine assessed within thirty days after notice, the license shall immediately be placed on inactive status pending action by the department, and the establishment or facility may not operate in any manner while its license is inactive.

The owner or manager of an establishment or a facility whose license has been placed on inactive status may appear before the board and the department to show cause why the department should not ask the Attorney General to initiate steps to revoke the license. The department may, as a result of such appearance, grant additional time for corrective action to occur, but the establishment or facility may not operate during such time. The establishment or facility may not return to operation until it has achieved a satisfactory rating on an inspection.

Source: Laws 1986, LB 318, § 131; Laws 1999, LB 68, § 86; Laws 2004, LB 906, § 30; R.S.Supp.,2006, § 71-3,170; Laws 2007, LB463, § 432.
Operative date December 1, 2008.

38-10,171 Unprofessional conduct; acts enumerated. Each of the following may be considered an act of unprofessional conduct when committed by a person licensed or registered under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act:

(1) Performing any of the practices regulated under the act for which an individual is not licensed or registered or operating an establishment or facility without the appropriate license;

(2) Obstructing, interfering, or failing to cooperate with an inspection or investigation conducted by an authorized representative of the department when acting in accordance with the act;

(3) Failing to report to the department a suspected violation of the act;

(4) Aiding and abetting an individual to practice any of the practices regulated under the act for which he or she is not licensed or registered;

(5) Engaging in any of the practices regulated under the act for compensation in an unauthorized location;

(6) Engaging in the practice of any healing art or profession for which a license is required without holding such a license;

(7) Enrolling a student or an apprentice without obtaining the appropriate documents prior to enrollment;

(8) Knowingly falsifying any student or apprentice record or report;

(9) Initiating or continuing home services to a client who does not meet the criteria established in the act;

(10) Knowingly issuing a certificate of completion or diploma to a student or an apprentice who has not completed all requirements for the issuance of such document;

(11) Failing, by a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon, to follow its published rules;

(12) Violating, by a school of cosmetology, nail technology school, or school of esthetics, any federal or state law involving the operation of a vocational school or violating any federal or state law involving participation in any federal or state loan or grant program;

(13) Knowingly permitting any person under supervision to violate any law, rule, or regulation or knowingly permitting any establishment or facility under supervision to operate in violation of any law, rule, or regulation;

(14) Receiving two unsatisfactory inspection reports within any sixty-day period;

(15) Engaging in any of the practices regulated under the act while afflicted with any active case of a serious contagious disease, infection, or infestation, as determined by the department, or in any other circumstances when such practice might be harmful to the health or safety of clients;

(16) Violating any rule or regulation relating to the practice of body art; and

(17) Performing body art on or to any person under eighteen years of age (a) without the prior written consent of the parent or court-appointed guardian of such person, (b) without the presence of such parent or guardian during the procedure, or (c) without retaining a copy of such consent for a period of five years.

Source: Laws 1986, LB 318, § 138; Laws 1995, LB 83, § 54; Laws 1999, LB 68, § 88; Laws 2002, LB 241, § 49; Laws 2004, LB 906, § 32; Laws 2004, LB 1005, § 39; R.S.Supp.,2006, § 71-3,177; Laws 2007, LB463, § 433.
Operative date December 1, 2008.

ARTICLE 11

DENTISTRY PRACTICE ACT

Section.

38-1101 Act, how cited. Sections 38-1101 to 38-1151 shall be known and may be cited as the Dentistry Practice Act.

Source: Laws 2007, LB463, § 434.
Operative date December 1, 2008.

38-1102 Definitions, where found. For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1103 to 38-1113 apply.

Source: Laws 2007, LB463, § 435.
Operative date December 1, 2008.

38-1103 Accredited dental hygiene program, defined. Accredited dental hygiene program means a program that is accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body, that is within a school or college approved by the board, and that requires a dental hygiene curriculum of not less than two academic years.

Source: Laws 2007, LB463, § 436.
Operative date December 1, 2008.

38-1104 Accredited school or college of dentistry, defined. Accredited school or college of dentistry means a school or college approved by the board and accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body.

Source: Laws 2007, LB463, § 437.
Operative date December 1, 2008.

38-1105 Analgesia, defined. Analgesia means the diminution or elimination of pain in the conscious patient.

Source: Laws 2007, LB463, § 438.
Operative date December 1, 2008.

38-1106 Board, defined. Board means the Board of Dentistry.

Source: Laws 2007, LB463, § 439.
Operative date December 1, 2008.

38-1107 Dental assistant, defined. Dental assistant means a person, other than a dental hygienist, employed by a licensed dentist for the purpose of assisting such dentist in the performance of his or her clinical and clinical-related duties.

Source: Laws 1986, LB 267, § 1; Laws 1999, LB 800, § 2; Laws 2001, LB 209, § 4; Laws 2002, LB 1062, § 14; R.S.1943, (2003), § 71-183.02; Laws 2007, LB463, § 440.
Operative date December 1, 2008.

38-1108 General anesthesia, defined. General anesthesia means a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Source: Laws 2007, LB463, § 441.
Operative date December 1, 2008.

38-1109 General supervision, defined. General supervision means the directing of the authorized activities of a dental hygienist or dental assistant by a licensed dentist and shall not be construed to require the physical presence of the supervisor when directing such activities.

Source: Laws 2007, LB463, § 442.
Operative date December 1, 2008.

38-1110 Indirect supervision, defined. Indirect supervision means supervision when the licensed dentist authorizes the procedure to be performed by a dental hygienist or dental assistant and the licensed dentist is physically present on the premises when such procedure is being performed by the dental hygienist pursuant to section 38-1132 or the dental assistant.

Source: Laws 2007, LB463, § 443.
Operative date December 1, 2008.

38-1111 Inhalation analgesia, defined. Inhalation analgesia means the administration of nitrous oxide and oxygen to diminish or eliminate pain in a conscious patient.

Source: Laws 2007, LB463, § 444.
Operative date December 1, 2008.

38-1112 Parenteral, defined. Parenteral means administration other than through the digestive tract, including, but not limited to, intravenous administration.

Source: Laws 2007, LB463, § 445.
Operative date December 1, 2008.

38-1113 Sedation, defined. Sedation means a depressed level of consciousness in which the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command is retained and which is produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Source: Laws 2007, LB463, § 446.
Operative date December 1, 2008.

38-1114 Board; membership. The board shall have ten members. The members shall consist of two public members; six licensed dentists, including one official or member of the instructional staff from each accredited school or college of dentistry in this state; and two licensed dental hygienists.

Source: Laws 2007, LB463, § 447.
Operative date December 1, 2008.

38-1115 Dentistry practice, defined. Any person shall be deemed to be practicing dentistry who:

(1) Performs, or attempts or professes to perform, any dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid directly or indirectly, to such person or to any other person or agency who is a proprietor of a place where dental operations, oral surgery, or dental services are performed;

(2) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, or performs any phase of any operation incident to the replacement of a part of a tooth;

(3) Supplies artificial substitutes for the natural teeth or furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth, except on the written work authorization of a duly licensed and registered dentist;

(4) Places such appliance or structure in the human mouth, adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose work authorization the work was performed;

(5) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(6) Diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(7) Extracts or attempts to extract human teeth or corrects or attempts to correct malformations of teeth or of the jaws;

(8) Repairs or fills cavities in the human teeth;

(9) Diagnoses, makes, and adjusts appliances to artificial casts or malposed teeth for treatment of the malposed teeth in the human mouth, with or without instruction;

(10) Uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms;

(11) Gives or professes to give interpretations or readings of dental X-rays or roentgenograms;

(12) Administers an anesthetic of any nature in connection with a dental operation;

(13) Uses the words dentist, dental surgeon, or oral surgeon, the letters D.D.S. or D.M.D., or any other words, letters, title, or descriptive matter which in any way represents such person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or adjacent structures; or

(14) States, professes, or permits to be stated or professed by any means or method whatsoever that he or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith.

Source: Laws 1927, c. 167, § 82, p. 475; C.S.1929, § 71-1201; R.S.1943, § 71-183; Laws 1951, c. 226, § 1, p. 821; Laws 1951, c. 227, § 1, p. 825; Laws 1971, LB 587, § 10; R.S.1943, (2003), § 71-183; Laws 2007, LB463, § 448.
Operative date December 1, 2008.

Cross Reference

Alcoholic liquor, possession and use in practice, see section 53-168.06.
Dental education loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-1116 Dentistry practice; exceptions. The Dentistry Practice Act shall not apply to:

(1) The practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;

(2) The giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;

(3) The practice of dentistry by graduate dentists or dental surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the Board of Dentistry, while appearing as clinicians;

(5) The filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;

(6) The use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;

(7) The performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the department;

(8) The performance by a dental assistant, under the supervision of a licensed dentist, of duties prescribed in accordance with rules and regulations adopted by the department;

(9) The performance by a licensed dental hygienist, by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the board and approved by the department;

(10) Students of dentistry who practice dentistry upon patients in clinics in the regular course of instruction at an accredited school or college of dentistry;

(11) Licensed physicians and surgeons who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession; or

(12) Dental hygiene students who practice dental hygiene upon patients in clinics in the regular course of instruction at an accredited dental hygiene program. Such dental hygiene students are also not engaged in the unauthorized practice of dental hygiene.

Source: Laws 1951, c. 226, § 2, p. 823; Laws 1951, c. 227, § 2, p. 827; Laws 1971, LB 587, § 11; Laws 1984, LB 470, § 5; Laws 1991, LB 2, § 10; Laws 1996, LB 1044, § 407; Laws 1999, LB 800, § 1; Laws 1999, LB 828, § 68; Laws 2005, LB 89, § 1; R.S.Supp.,2006, § 71-183.01; Laws 2007, LB463, § 449.
Operative date December 1, 2008.

38-1117 Dentistry; license; requirements. (1) Every applicant for a license to practice dentistry shall (a) present proof of graduation with a Doctor of Dental Surgery degree or a Doctor of Dental Medicine degree from an accredited school or college of dentistry, (b) pass an examination approved by the Board of Dentistry which shall consist of the National Board Dental Examinations, both Part I and Part II, as constructed and administered by the American Dental Association Joint Commission on National Dental Examinations, (c) demonstrate the applicant's skill in clinical dentistry by passing the practical examination administered by the Central Regional Dental Testing Service or any other regional or state practical examination that the Board of Dentistry determines to be comparable to such practical examination, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dentistry and dental hygiene, and (e) demonstrate continuing clinical competency as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice dentistry.

Source: Laws 1927, c. 167, § 84, p. 476; Laws 1929, c. 160, § 1, p. 555; C.S.1929, § 71-1203; R.S.1943, § 71-185; Laws 1953, c. 238, § 4, p. 826; Laws 1957, c. 292, § 2, p. 1049; Laws 1984, LB 470, § 6; Laws 1985, LB 250, § 12; Laws 1988, LB 1100, § 30; Laws 1999, LB 828, § 69; Laws 2002, LB 1021, § 17; Laws 2003, LB 242, § 34; R.S.1943, (2003), § 71-185; Laws 2007, LB463, § 450.
Operative date December 1, 2008.

38-1118 Dental hygienists; application for license; examination; qualifications; license. (1) Every applicant for a license to practice dental hygiene shall (a) present proof of graduation from an accredited dental hygiene program, (b) pass an examination approved by the Board of Dentistry which shall consist of the National Board Dental

Hygiene Examination as constructed and administered by the American Dental Association Joint Commission on National Dental Examinations, (c) demonstrate the applicant's skill in clinical dental hygiene by passing the practical examination administered by the Central Regional Dental Testing Service or any other regional or state practical examination that the Board of Dentistry determines to be comparable to such practical examination, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dentistry and dental hygiene, and (e) demonstrate continuing clinical competency as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice dental hygiene.

Source: Laws 1949, c. 200, § 1, p. 582; Laws 1953, c. 238, § 5, p. 827; Laws 1973, LB 589, § 1; Laws 1986, LB 926, § 42; Laws 1988, LB 1100, § 32; Laws 1999, LB 828, § 73; Laws 2001, LB 209, § 5; R.S.1943, (2003), § 71-193.04; Laws 2007, LB463, § 451.
Operative date December 1, 2008.

38-1119 Reexamination; requirements. Any person who applies for a license to practice dentistry or dental hygiene and who has failed on two occasions to pass any part of the practical examination shall be required to complete a course in clinical dentistry or dental hygiene approved by the board before the department may consider the results of a third examination as a valid qualification for a license to practice dentistry or dental hygiene in the State of Nebraska.

Source: Laws 2007, LB463, § 452.
Operative date December 1, 2008.

38-1120 Dentist; reciprocity; requirements. Every applicant for a license to practice dentistry based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dentistry for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 453.
Operative date December 1, 2008.

38-1121 Dental hygienist; reciprocity; requirements. Every applicant for a license to practice dental hygiene based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dental hygiene for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental hygiene program for the purpose of completing a postgraduate

or residency program in dental hygiene also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 454.
Operative date December 1, 2008.

38-1122 Dental locum tenens; issuance; requirements; term. When circumstances indicate a need for the issuance of a dental locum tenens in the State of Nebraska, the department, with the recommendation of the board, may issue a dental locum tenens to an individual who holds an active license to practice dentistry in another state if the requirements regarding education and examination for licensure in that state are equal to or exceed the requirements regarding education and examination for licensure in Nebraska. A dental locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2007, LB463, § 455.
Operative date December 1, 2008.

38-1123 Dentist; temporary license; requirements; term; renewal. (1) The department, with the recommendation of the board, shall issue a temporary license to any person who (a) has met the requirements for a license to practice dentistry as set forth in section 38-1117, (b) is enrolled in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry, and (c) is licensed in another jurisdiction under conditions which the board finds equivalent to the requirements of the State of Nebraska for obtaining a license to practice dentistry.

(2) Any person who desires a temporary license shall make application to the department. Such application shall be accompanied by the required fee.

(3) The temporary license shall be issued for a period of one year and, upon application to the department, renewed annually without the licensee having to pay a renewal fee.

(4) The temporary licensee shall be entitled to practice dentistry, including prescribing legend drugs and controlled substances, only under the auspices of the postgraduate or residency program in which he or she is enrolled.

Source: Laws 1988, LB 1100, § 31; Laws 1999, LB 828, § 71; Laws 2003, LB 242, § 35; R.S.1943, (2003), § 71-185.02; Laws 2007, LB463, § 456.
Operative date December 1, 2008.

38-1124 Faculty license; requirements; renewal; continuing competency. (1) The department, with the recommendation of the board, shall issue a faculty license to any person who meets the requirements of subsection (3) or (4) of this section. A faculty licensee may practice dentistry only as a faculty member at an accredited school or college of dentistry in the State of Nebraska and may teach dentistry, conduct research, and participate in an institutionally administered faculty practice only at such accredited school or college of dentistry. A faculty licensee eligible for licensure under subsection (4) of this section shall

limit his or her practice to the clinical discipline in which he or she has received postgraduate education at an accredited school or college of dentistry.

(2) Any person who desires a faculty license shall make a written application to the department. The application shall include information regarding the applicant's professional qualifications, experience, and licensure. The application shall be accompanied by a copy of the applicant's dental degree, any other degrees or certificates for postgraduate education of the applicant, the required fee, and certification from the dean of an accredited school or college of dentistry in the State of Nebraska at which the applicant has a contract to be employed as a full-time faculty member.

(3) An individual who graduated from an accredited school or college of dentistry shall be eligible for a faculty license if he or she:

(a) Has or had a license to practice dentistry within the past five years in some other state in the United States or a Canadian province;

(b) Has a contract to be employed as a full-time faculty member at an accredited school or college of dentistry in the State of Nebraska;

(c) Passes a jurisprudence examination administered by the board; and

(d) Agrees to demonstrate continuing clinical competency as a condition of licensure if required by the board.

(4) An individual who graduated from a nonaccredited school or college of dentistry shall be eligible for a faculty license if he or she:

(a) Has completed at least two years of postgraduate education at an accredited school or college of dentistry and received a certificate or degree from such school or college of dentistry;

(b) Has a contract to be employed as a full-time faculty member at an accredited school or college of dentistry in the State of Nebraska;

(c) Passes a jurisprudence examination administered by the board;

(d) Agrees to demonstrate continuing clinical competency as a condition of licensure if required by the board; and

(e) Has passed Part I and Part II of the National Board Dental Examinations or its equivalent as determined by the Board of Dentistry.

(5) A faculty license shall expire at the same time and be subject to the same renewal requirements as a regular dental license, except that such license shall remain valid and may only be renewed if:

(a) The faculty licensee remains employed as a full-time faculty member of an accredited school or college of dentistry in the State of Nebraska; and

(b) The faculty licensee demonstrates continuing clinical competency if required by the board.

Source: Laws 2002, LB 1062, § 16; Laws 2003, LB 242, § 36; Laws 2004, LB 1005, § 11; R.S.Supp.,2006, § 71-185.03; Laws 2007, LB463, § 457.
Operative date December 1, 2008.

38-1125 Practitioner's facility; requirements; inspections; rules and regulations. (1) For purposes of this section, practitioner's facility means a facility in which a licensed dentist practices his or her profession, other than a facility licensed pursuant to the Health Care Facility Licensure Act.

(2) The department shall adopt and promulgate rules and regulations which are approved by the State Board of Health for practitioners' facilities in order to insure that such facilities are safe and sanitary and use precautions necessary to prevent the creation and spread of infectious and contagious diseases. Based upon a formal complaint, the department or its employees may inspect any practitioner's facility in this state to insure compliance with such regulations.

(3) Within thirty days after an inspection of a practitioner's facility which the department or its employees find to be in violation of its rules and regulations, the department shall notify the Board of Dentistry of its findings in writing. The Attorney General shall file a petition for disciplinary action pursuant to section 38-186 if the violation of the rules and regulations is not corrected within thirty days after the licensee has received notice of such violation. The department shall send a written progress report of its inspection and actions taken to the board.

(4) It shall be considered unprofessional conduct for a licensee to practice in a facility that does not comply with the rules and regulations regarding sanitary practitioners' facilities.

Source: Laws 1984, LB 470, § 1; Laws 1996, LB 1044, § 408; Laws 1999, LB 828, § 70; Laws 2000, LB 819, § 85; R.S.1943, (2003), § 71-185.01; Laws 2007, LB463, § 458.
Operative date December 1, 2008.

Cross Reference

Alcoholic liquor, possession and use in practice, see section 53-168.06.
Health Care Facility Licensure Act, see section 71-401.

38-1126 Fees. The department shall establish and collect fees for credentialing under the Dentistry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 459.
Operative date December 1, 2008.

38-1127 Dentists; name of associate; duty to display. Every person who owns, operates, or controls a dental office in which anyone other than himself or herself is practicing dentistry, shall display the name of such person or persons in a conspicuous place at the public entrance to such office.

Source: Laws 1927, c. 167, § 88, p. 478; C.S.1929, § 71-1207; R.S.1943, (2003), § 71-189; Laws 2007, LB463, § 460.
Operative date December 1, 2008.

38-1128 Dentist; unlicensed associate prohibited; coercion prohibited. (1) No person owning, operating, or conducting any place where dental work of any kind is done or contracted for shall employ or permit any unlicensed dentist to practice dentistry in such place.

(2) No person shall coerce or attempt to coerce a licensed dentist to practice dentistry in any manner contrary to the standards of acceptable and prevailing practice of the dental

profession. Any dentist subjected to such coercion or attempted coercion has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(3) Violation of this section by a health care professional regulated pursuant to the Uniform Credentialing Act may be considered evidence of an act of unprofessional conduct.

Source: Laws 1927, c. 167, § 89, p. 478; C.S.1929, § 71-1208; R.S.1943, § 71-190; Laws 2004, LB 1005, § 12; R.S.Supp.,2006, § 71-190; Laws 2007, LB463, § 461.
Operative date December 1, 2008.

38-1129 Dentist; use of own name required; exception. No person shall operate any place in which dentistry is practiced under any other name than his or her own or display in connection with his or her practice or on any advertising matter any other than his or her own name. Two or more licensed dentists who are associated in the practice may use all of their names. A widow, widower, or heir of a deceased dentist may operate such office under the name of the deceased dentist for a period of not longer than one year from the date of death.

Source: Laws 1927, c. 167, § 90, p. 479; C.S.1929, § 71-1209; R.S.1943, § 71-191; Laws 1957, c. 292, § 3, p. 1050; R.S.1943, (2003), § 71-191; Laws 2007, LB463, § 462.
Operative date December 1, 2008.

38-1130 Licensed dental hygienist; functions authorized; when. (1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and inservice training sessions on dental health; and all of the duties that any dental assistant is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist with three thousand hours of clinical experience in at least four of the preceding five calendar years to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Oral prophylaxis to healthy children who do not require antibiotic premedication; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of clinical experience as required under subdivision (a) of this subsection. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that

such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 24, with LB 296, section 328, and LB 463, section 463, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1131 Licensed dental hygienist; procedures and functions authorized; enumerated. When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

(1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;

(2) Polish all exposed tooth surfaces, including restorations;

(3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;

(4) Brush biopsies;

(5) Pulp vitality testing;

(6) Gingival curettage;

(7) Removal of sutures;

(8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(9) Impressions for study casts;

(10) Application of topical and subgingival agents;

(11) Radiographic exposures;

(12) Oral health education, including conducting workshops and inservice training sessions on dental health;

(13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents; and

(14) All of the duties that any dental assistant is authorized to perform.

Source: Laws 1986, LB 572, § 3; Laws 1999, LB 800, § 7; R.S.1943, (2003), § 71-193.17; Laws 2007, LB247, § 25; Laws 2007, LB463, § 464.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 25, with LB 463, section 464, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1132 Licensed dental hygienist; monitor analgesia; administer local anesthesia; when. (1) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, with the recommendation of the board, to administer local anesthesia under the indirect supervision of a licensed dentist. The board may prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia. The board may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an accredited school or college of dentistry or an accredited dental hygiene program. The course of instruction must be taught by a faculty member or members of the school or college of dentistry or dental hygiene program presenting the course. The board may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle and posterior superior alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Source: Laws 1986, LB 572, § 4; Laws 1995, LB 449, § 1; Laws 1996, LB 1044, § 416; Laws 1999, LB 800, § 8; Laws 1999, LB 828, § 75; Laws 2003, LB 242, § 37; R.S.1943, (2003), § 71-193.18; Laws 2007, LB296, § 329; Laws 2007, LB463, § 465.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1133 Department; additional procedures; rules and regulations. The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1131 which may be performed by a licensed dental hygienist under the supervision of a licensed dentist when such additional procedures are educational or related to the oral prophylaxis and intended to attain or maintain optimal oral health.

Source: Laws 1986, LB 572, § 6; Laws 1996, LB 1044, § 417; R.S.1943, (2003), § 71-193.19; Laws 2007, LB296, § 330; Laws 2007, LB463, § 466.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 330, with LB 463, section 466, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1134 Department; employment facilities; rules and regulations. The department, with the recommendation of the board, may adopt and promulgate rules and regulations providing for employment or work-setting facilities required for the provision of dental services by a licensed dental hygienist.

Source: Laws 1986, LB 572, § 7; Laws 1996, LB 1044, § 418; Laws 1999, LB 828, § 76; R.S.1943, (2003), § 71-193.20; Laws 2007, LB463, § 467.
Operative date December 1, 2008.

38-1135 Dental assistants; employment; duties performed. Any licensed dentist, public institution, or school may employ dental assistants in addition to licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1971, LB 587, § 13; Laws 1986, LB 572, § 1; Laws 1996, LB 1044, § 413; Laws 1999, LB 800, § 3; R.S.1943, (2003), § 71-193.13; Laws 2007, LB296, § 327; Laws 2007, LB463, § 468.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 327, with LB 463, section 468, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1136 Dental hygienists; dental assistants; performance of duties; rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and dental assistants.

Source: Laws 1971, LB 587, § 14; Laws 1996, LB 1044, § 414; Laws 1999, LB 800, § 4; Laws 1999, LB 828, § 74; R.S.1943, (2003), § 71-193.14; Laws 2007, LB463, § 469.
Operative date December 1, 2008.

38-1137 Administration of anesthesia, sedation, or analgesia; permit required; exception. A dentist licensed in this state shall not administer general anesthesia, parenteral sedation, or inhalation analgesia in the practice of dentistry unless he or she has been issued a permit to administer general anesthesia, parenteral sedation, or inhalation analgesia pursuant to the Dentistry Practice Act.

Source: Laws 1986, LB 438, § 3; R.S.1943, (2003), § 71-193.23; Laws 2007, LB463, § 470.
Operative date December 1, 2008.

38-1138 Violations; effect. A violation of provisions of the Dentistry Practice Act relating to the administration of general anesthesia, parenteral sedation, or inhalation analgesia may result in action against the dentist's permit, license, or both pursuant to section 38-196.

Source: Laws 1986, LB 438, § 5; Laws 1988, LB 1100, § 33; R.S.1943, (2003), § 71-193.25; Laws 2007, LB463, § 471.
Operative date December 1, 2008.

38-1139 Permit to administer general anesthesia; issuance; conditions. The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer general anesthesia on an outpatient basis to dental patients if the dentist:

(1) Maintains a properly equipped facility for the administration of general anesthesia as determined by the board;

(2) Is currently certified in basic life-support skills or the equivalent thereof;

(3) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and

(4) Meets at least one of the following criteria:

(a) Has completed one year of advanced training in anesthesiology and related academic subjects beyond the dental school level in an approved training program;

(b) Is a diplomate of the American Board of Oral and Maxillofacial Surgery;

(c) Has completed the educational requirements for eligibility for examination by the American Board of Oral and Maxillofacial Surgery; or

(d) Is a fellow of the American Dental Society of Anesthesiology.

A dentist who has been issued a permit pursuant to this section may administer parenteral sedation or inhalation analgesia.

Source: Laws 1986, LB 438, § 6; R.S.1943, (2003), § 71-193.26; Laws 2007, LB463, § 472.
Operative date December 1, 2008.

38-1140 Permit to administer parenteral sedation; issuance; conditions. The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer parenteral sedation on an outpatient basis to dental patients if the dentist:

(1) Maintains a properly equipped facility for the administration of parenteral sedation as determined by the board;

(2) Is currently certified in basic life-support skills or the equivalent thereof;

(3) Has successfully completed an onsite evaluation covering the areas of physical evaluation, monitoring, sedation, and emergency medicine; and

(4) Is certified as competent in the administration of parenteral sedation and in handling all related emergencies by a university, teaching hospital, or other facility approved by the board or by completing the curriculum of an accredited school or college of dentistry. Such certification shall specify the type, the number of hours, and the length of formal training completed at such school or college of dentistry. The formal training shall include, but not be limited to, forty didactic hours and twenty patient contact hours, including documentation of a minimum of fifteen supervised parenteral sedation cases.

A dentist who has been issued a permit pursuant to this section may administer inhalation analgesia.

Source: Laws 1986, LB 438, § 7; R.S.1943, (2003), § 71-193.27; Laws 2007, LB463, § 473.
Operative date December 1, 2008.

38-1141 Permit to administer inhalation analgesia; issuance; conditions. The department, with the recommendation of the board, shall issue a permit to a Nebraska-licensed dentist to administer inhalation analgesia on an outpatient basis to dental patients if the dentist:

(1) Maintains a properly equipped facility for the administration of inhalation analgesia as determined by the board;

(2) Is currently certified in basic life-support skills or the equivalent thereof; and

(3) Has completed an approved two-day training course or equivalent training which may be acquired while studying at an accredited school or college of dentistry.

Source: Laws 1986, LB 438, § 9; R.S.1943, (2003), § 71-193.29; Laws 2007, LB463, § 474.
Operative date December 1, 2008.

38-1142 Presence of licensed dental hygienist or dental assistant required. General anesthesia and parenteral sedation shall not be administered by a dentist without the presence and assistance of a licensed dental hygienist or a dental assistant.

Source: Laws 1986, LB 438, § 8; Laws 1999, LB 800, § 9; R.S.1943, (2003), § 71-193.28; Laws 2007, LB463, § 475.
Operative date December 1, 2008.

38-1143 Assistant; certification required. Any person who assists a dentist in the administration of general anesthesia, parenteral sedation, or inhalation analgesia shall be currently certified in basic life-support skills or the equivalent thereof.

Source: Laws 1986, LB 438, § 13; R.S.1943, (2003), § 71-193.33; Laws 2007, LB463, § 476.
Operative date December 1, 2008.

38-1144 Administration of anesthesia, sedation, or analgesia; limitation. Nothing in the Dentistry Practice Act shall be construed to allow a dentist to administer to himself or herself, or to any person other than in the course of the practice of dentistry, any drug or agent used for general anesthesia, parenteral sedation, or inhalation analgesia.

Source: Laws 1986, LB 438, § 10; R.S.1943, (2003), § 71-193.30; Laws 2007, LB463, § 477. Operative date December 1, 2008.

38-1145 Permits; term; department; adopt rules and regulations. (1) Permits issued for the administration of general anesthesia, parenteral sedation, or inhalation analgesia pursuant to the Dentistry Practice Act shall be valid until March 1 of the next odd-numbered year after issuance, except that permits issued or renewed prior to March 1, 2007, shall expire March 1, 2009.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to define criteria for the reevaluation of credentials, facilities, equipment, dental hygienists, and dental assistants and procedures of a previously qualified dentist to renew his or her permit for each subsequent renewal.

Source: Laws 1986, LB 438, § 11; Laws 1988, LB 1100, § 34; Laws 1999, LB 800, § 10; Laws 2003, LB 242, § 38; R.S.1943, (2003), § 71-193.31; Laws 2007, LB463, § 478. Operative date December 1, 2008.

38-1146 Inspection of practice location. All practice locations of a dentist applying for a permit to administer general anesthesia, parenteral sedation, or inhalation analgesia may be inspected at the discretion of the board. The board may contract to have such inspections performed. The board shall not delegate authority to review and to make recommendations on permit applications or to determine the persons or facilities to be inspected.

Source: Laws 1986, LB 438, § 12; R.S.1943, (2003), § 71-193.32; Laws 2007, LB463, § 479. Operative date December 1, 2008.

38-1147 Incident report; contents; failure to submit; penalty. (1) All licensed dentists practicing in this state shall submit a report to the board within thirty days of any incident which results in death or physical or mental injury requiring hospitalization of a patient which occurs in the outpatient facilities of such dentist during, or as a direct result of, inhalation analgesia, parenteral sedation, or general anesthesia.

(2) The incident report shall include, but not be limited to:

(a) A description of the dental procedure;

(b) A description of the preoperative physical condition of the patient;

(c) A list of the drugs and the dosage administered;

(d) A detailed description of the techniques used in administering the drugs;

(e) A description of the incident, including, but not limited to, a detailed description of the symptoms of any complications, the symptoms of onset, and the type of symptoms in the patient;

(f) A description of the treatment instituted;

(g) A description of the patient's response to the treatment; and

(h) A description of the patient's condition on termination of any procedures undertaken.

(3) Failure to submit an incident report as required by this section shall result in the loss of the permit.

Source: Laws 1986, LB 438, § 14; R.S.1943, (2003), § 71-193.34; Laws 2007, LB463, § 480.
Operative date December 1, 2008.

38-1148 Department; permits to administer anesthesia, sedation, or analgesia; adopt rules and regulations. The department, with the recommendation of the board, may adopt and promulgate rules and regulations necessary to carry out the provisions of the Dentistry Practice Act relating to permits to administer general anesthesia, parenteral sedation, or inhalation analgesia.

Source: Laws 1986, LB 438, § 15; R.S.1943, (2003), § 71-193.35; Laws 2007, LB463, § 481.
Operative date December 1, 2008.

38-1149 Office of Oral Health and Dentistry; Dental Health Director; appointment. There is hereby established the Office of Oral Health and Dentistry in the department. The head of such office shall be known as the Dental Health Director and shall be appointed by the department. The Dental Health Director shall give full time to his or her duties.

Source: Laws 1949, c. 201, § 1, p. 584; Laws 1953, c. 239, § 1, p. 828; Laws 1996, LB 1044, § 411; Laws 2006, LB 994, § 82; R.S.Supp.,2006, § 71-193.01; Laws 2007, LB296, § 326; Laws 2007, LB463, § 482.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 326, with LB 463, section 482, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1150 Dental Health Director; qualifications. The Dental Health Director shall be a graduate of an accredited school or college of dentistry and shall be licensed by the State of Nebraska to practice dentistry in Nebraska or duly licensed to practice dentistry in some other state of the United States of America.

Source: Laws 1949, c. 201, § 2, p. 584; Laws 1953, c. 240, § 1, p. 829; Laws 2006, LB 994, § 83; R.S.Supp.,2006, § 71-193.02; Laws 2007, LB463, § 483.
Operative date December 1, 2008.

38-1151 Office of Oral Health and Dentistry; duties; rules and regulations. The duties of the Office of Oral Health and Dentistry shall be the promotion and development of activities which will result in the practice and improvement of the dental health of the people of the state under rules and regulations adopted and promulgated by the department.

Source: Laws 1949, c. 201, § 3, p. 585; Laws 1996, LB 1044, § 412; Laws 2006, LB 994, § 84; R.S.Supp.,2006, § 71-193.03; Laws 2007, LB463, § 484.
Operative date December 1, 2008.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section.

38-1201 Act, how cited. Sections 38-1201 to 38-1237 shall be known and may be cited as the Emergency Medical Services Practice Act.

Source: Laws 1997, LB 138, § 1; Laws 2003, LB 242, § 128; R.S.1943, (2003), § 71-5172; Laws 2007, LB463, § 485.
Operative date December 1, 2008.

38-1202 Legislative intent; act; how construed. It is the intent of the Legislature in enacting the Emergency Medical Services Practice Act to (1) effectuate the delivery of quality out-of-hospital emergency medical care in the state, (2) eliminate duplication of statutory requirements, (3) merge the former boards responsible for regulating ambulance services and emergency medical care, (4) replace the former law regulating providers of and services delivering emergency medical care, (5) provide for the appropriate licensure of persons providing out-of-hospital medical care and licensure of organizations providing emergency medical services, (6) provide for the establishment of educational requirements and permitted practices for persons providing out-of-hospital emergency medical care, (7) provide a system for regulation of out-of-hospital emergency medical care which encourages out-of-hospital emergency care providers and emergency medical services to provide the highest degree of care which they are capable of providing, and (8) provide a flexible system for the regulation of out-of-hospital emergency care providers and emergency medical services that protects public health and safety.

The act shall be liberally construed to effect the purposes of, carry out the intent of, and discharge the responsibilities prescribed in the act.

Source: Laws 1997, LB 138, § 2; R.S.1943, (2003), § 71-5173; Laws 2007, LB463, § 486.
Operative date December 1, 2008.

38-1203 Legislative findings. The Legislature finds:

(1) That out-of-hospital emergency medical care is a primary and essential health care service and that the presence of an adequately equipped ambulance and trained out-of-hospital emergency care providers may be the difference between life and death or permanent disability to those persons in Nebraska making use of such services in an emergency;

(2) That effective delivery of out-of-hospital emergency medical care may be assisted by a program of training and licensure of out-of-hospital emergency care providers and licensure of emergency medical services in accordance with rules and regulations adopted by the board;

(3) That the Emergency Medical Services Practice Act is essential to aid in advancing the quality of care being provided by out-of-hospital emergency care providers and by emergency medical services and the provision of effective, practical, and economical delivery of out-of-hospital emergency medical care in the State of Nebraska;

(4) That the services to be delivered by out-of-hospital emergency care providers are complex and demanding and that training and other requirements appropriate for delivery of the services must be constantly reviewed and updated; and

(5) That the enactment of a regulatory system that can respond to changing needs of patients and out-of-hospital emergency care providers and emergency medical services is in the best interests of the citizens of Nebraska.

Source: Laws 1997, LB 138, § 3; R.S.1943, (2003), § 71-5174; Laws 2007, LB463, § 487. Operative date December 1, 2008.

38-1204 Definitions, where found. For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1205 to 38-1214 apply.

Source: Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 602, with LB 463, section 488, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1205 Ambulance, defined. Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state, including funeral coaches or hearses, or any other motor vehicles or aircraft used for such purposes.

Source: Laws 2007, LB463, § 489. Operative date December 1, 2008.

38-1206 Board, defined. Board means the Board of Emergency Medical Services.

Source: Laws 2007, LB463, § 490. Operative date December 1, 2008.

38-1207 Emergency medical service, defined. Emergency medical service means the organization responding to a perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 2007, LB463, § 491. Operative date December 1, 2008.

38-1208 Out-of-hospital emergency care provider. Out-of-hospital emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act.

Source: Laws 2007, LB463, § 492. Operative date December 1, 2008.

38-1209 Patient, defined. Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an out-of-hospital emergency care provider has an injury or illness requiring treatment.

Source: Laws 2007, LB463, § 493.
Operative date December 1, 2008.

38-1210 Physician medical director, defined. Physician medical director means a qualified physician who is responsible for the medical supervision of out-of-hospital emergency care providers and verification of skill proficiency of out-of-hospital emergency care providers pursuant to section 38-1217.

Source: Laws 2007, LB463, § 494.
Operative date December 1, 2008.

38-1211 Protocol, defined. Protocol means a set of written policies, procedures, and directions from a physician medical director to an out-of-hospital emergency care provider concerning the medical procedures to be performed in specific situations.

Source: Laws 2007, LB463, § 495.
Operative date December 1, 2008.

38-1212 Qualified physician, defined. Qualified physician means an individual who is licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act and meets any other requirements established by rule and regulation.

Source: Laws 2007, LB463, § 496.
Operative date December 1, 2008.

38-1213 Qualified physician surrogate, defined. Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or renewal of licensure of out-of-hospital emergency care providers.

Source: Laws 2007, LB463, § 497.
Operative date December 1, 2008.

38-1214 Standing order, defined. Standing order means a direct order from the physician medical director to perform certain tasks for a patient under a specific set of circumstances.

Source: Laws 2007, LB463, § 498.
Operative date December 1, 2008.

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 of Emergency Medical Services 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. Two of the seven members who are out-of-hospital emergency care providers shall be first responders, two shall be emergency medical technicians, one shall be an emergency medical technician-intermediate, and two shall be emergency medical technicians-paramedic.

(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 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.
Operative date December 1, 2008.

Cross Reference

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties. In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

(1) Promote the dissemination of public information and education programs to inform the public about out-of-hospital emergency medical care and other out-of-hospital medical information, including appropriate methods of medical self-help, first aid, and the availability of out-of-hospital emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of out-of-hospital emergency medical care, evaluate the availability and quality of out-of-hospital emergency medical care, and serve as a focal point for discussion of the provision of out-of-hospital emergency medical care;

(3) Review and comment on all state agency proposals and applications that seek funding for out-of-hospital emergency medical care;

(4) Establish model procedures for patient management in out-of-hospital medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during an out-of-hospital medical emergency;

(5) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the out-of-hospital emergency medical care needs of the citizens of the State of Nebraska and report to the Legislature any recommendations which it may have; and

(6) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for out-of-hospital emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500.
Operative date December 1, 2008.

38-1217 Rules and regulations. The board shall adopt rules and regulations necessary to:

(1) Create the following licensure classifications of out-of-hospital emergency care providers: (a) First responder; (b) emergency medical technician; (c) emergency medical

technician-intermediate; and (d) emergency medical technician-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;

(2) 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;

(3) 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;

(4) 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;

(5) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(6) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(7) 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;

(8) 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;

(9) 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;

(10) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(11) 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; and

(12) Establish criteria for emergency medical technicians-intermediate and emergency medical technicians-paramedic 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.

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.
Operative date December 1, 2008.

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) of section 38-1217 until modified by rule and regulation.

(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.
Operative date December 1, 2008.

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; 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.
Operative date December 1, 2008.

38-1220 Act; exemptions. The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

(1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;

(2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;

(3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;

(4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;

(5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, licensed practical nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;

(6) Persons authorized to perform out-of-hospital emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of a licensed out-of-hospital emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504.
Operative date December 1, 2008.

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) of section 38-1217.

(2) All licenses issued under the act 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.
Operative date December 1, 2008.

38-1222 Fees. The department shall establish and collect fees for credentialing activities under the Emergency Medical Services Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2003, LB 242, § 129; R.S.1943, (2003), § 71-5181.01; Laws 2007, LB463, § 506.
Operative date December 1, 2008.

38-1223 Physician medical director; required. Each licensed emergency medical service shall have a physician medical director.

Source: Laws 1997, LB 138, § 12; R.S.1943, (2003), § 71-5183; Laws 2007, LB463, § 507.
Operative date December 1, 2008.

38-1224 Duties and activities authorized; limitations. (1) An out-of-hospital emergency care provider other than a first 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 or an emergency medical technician-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.
Operative date December 1, 2008.

38-1225 Patient data; confidentiality; immunity. (1) No patient data received or recorded by an emergency medical service or an out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, or as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, to an emergency medical service, to an out-of-hospital emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or out-of-hospital emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 42, with LB 463, section 509, to reflect all amendments.
Note: The changes made by LB 185 became operative September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1226 Ambulance; transportation requirements. No ambulance shall transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one licensed out-of-hospital emergency care provider. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, licensed physician

assistant, or licensed practical nurse functioning within the scope of practice of his or her license.

Source: Laws 1997, LB 138, § 15; R.S.1943, (2003), § 71-5186; Laws 2007, LB463, § 510. Operative date December 1, 2008.

38-1227 Motor vehicle ambulance; driver privileges. The driver of a licensed motor vehicle ambulance who holds a valid driver's license issued by the state of his or her residence may exercise the privileges set forth in Nebraska statutes relating to emergency vehicles when responding to an emergency call or while transporting a patient.

Source: Laws 1997, LB 138, § 16; R.S.1943, (2003), § 71-5187; Laws 2007, LB463, § 511. Operative date December 1, 2008.

38-1228 Department; waive rule, regulation, or standard; when. The department, with the approval of the board, may, whenever it deems appropriate, waive any rule, regulation, or standard relating to the licensure of emergency medical services or out-of-hospital emergency care providers when the lack of a licensed emergency medical service in a municipality or other area will create an undue hardship in the municipality or other area in meeting the emergency medical service needs of the people thereof.

Source: Laws 1997, LB 138, § 17; R.S.1943, (2003), § 71-5188; Laws 2007, LB463, § 512. Operative date December 1, 2008.

38-1229 License; person on national registry. The department, with the recommendation of the board, may issue a license to any individual who has a current certificate from the National Registry of Emergency Medical Technicians. The level of such licensure shall be determined by the board.

Source: Laws 1997, LB 138, § 18; R.S.1943, (2003), § 71-5189; Laws 2007, LB463, § 513. Operative date December 1, 2008.

38-1230 License; sale, transfer, or assignment; prohibited. A license issued under the Emergency Medical Services Practice Act shall not be sold, transferred, or assigned by the holder. Any change of ownership of an emergency medical service requires a new application and a new license.

Source: Laws 1997, LB 138, § 19; R.S.1943, (2003), § 71-5190; Laws 2007, LB463, § 514. Operative date December 1, 2008.

38-1231 Person objecting to treatment; effect. The Emergency Medical Services Practice Act or the rules or regulations shall not be construed to authorize or require giving any medical treatment to a person who objects to such treatment on religious or other grounds or to authorize the transportation of such person to a medical facility.

Source: Laws 1997, LB 138, § 22; R.S.1943, (2003), § 71-5193; Laws 2007, LB463, § 515. Operative date December 1, 2008.

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 (7) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516. Operative date December 1, 2008.

38-1233 Out-of-hospital emergency care provider; liability relating to consent. No out-of-hospital emergency care provider shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

Source: Laws 1997, LB 138, § 24; R.S.1943, (2003), § 71-5195; Laws 2007, LB463, § 517. Operative date December 1, 2008.

38-1234 Out-of-hospital emergency care provider; liability within scope of practice. No act of commission or omission of any out-of-hospital emergency care provider while rendering emergency medical care within the limits of his or her licensure or status as a trainee to a person who is deemed by the provider to be in immediate danger of injury or loss of life shall impose any liability on any other person, and this section shall not relieve the out-of-hospital emergency care provider from personal liability, if any.

Source: Laws 1997, LB 138, § 25; R.S.1943, (2003), § 71-5196; Laws 2007, LB463, § 518. Operative date December 1, 2008.

38-1235 Department; accept gifts. The department may accept from any person, in the name of and for the state, services, equipment, supplies, materials, or funds by way of

bequest, gift, or grant for the purposes of promoting emergency medical care. Any such funds received shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1997, LB 138, § 26; R.S.1943, (2003), § 71-5197; Laws 2007, LB296, § 604; Laws 2007, LB463, § 519.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 604, with LB 463, section 519, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1236 Act; construction with other laws. The provisions of the Emergency Medical Services Practice Act shall not be construed to supersede, limit, or otherwise affect the state emergency management laws or any interstate civil defense compact participated in by the State of Nebraska dealing with the licenses for professional, mechanical, or other skills of persons performing emergency management functions.

Source: Laws 1997, LB 138, § 27; R.S.1943, (2003), § 71-5198; Laws 2007, LB463, § 520. Operative date December 1, 2008.

38-1237 Prohibited acts. It shall be unlawful for any person who has not been licensed pursuant to the Emergency Medical Services Practice Act to hold himself or herself out as an out-of-hospital emergency care provider, to use any other term to indicate or imply that he or she is an out-of-hospital emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of out-of-hospital emergency care providers unless the training agency is approved pursuant to rules and regulations of the board. It shall be unlawful for any person to operate an emergency medical service unless such service is licensed.

Source: Laws 1997, LB 138, § 28; R.S.1943, (2003), § 71-5199; Laws 2007, LB463, § 521. Operative date December 1, 2008.

ARTICLE 13

ENVIRONMENTAL HEALTH SPECIALISTS PRACTICE ACT

Section.

38-1301 Act, how cited. Sections 38-1301 to 38-1315 shall be known and may be cited as the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 522.
Operative date December 1, 2008.

38-1302 Definitions, where found. For purposes of the Environmental Health Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1303 to 38-1306 apply.

Source: Laws 1963, c. 400, § 2, p. 1279; Laws 1989, LB 344, § 27; Laws 1991, LB 703, § 38; Laws 1996, LB 1044, § 666; Laws 2003, LB 242, § 116; R.S.1943, (2003), § 71-3702; Laws 2007, LB296, § 578; Laws 2007, LB463, § 523.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 578, with LB 463, section 523, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1303 Board, defined. Board means the Board of Registered Environmental Health Specialists.

Source: Laws 2007, LB463, § 524.
Operative date December 1, 2008.

38-1304 Environmental health specialist, defined. Environmental health specialist means a person who by education and experience in the physical, biological, and sanitary sciences is qualified to carry out educational, investigational, and technical duties in the field of environmental sanitation.

Source: Laws 2007, LB463, § 525.
Operative date December 1, 2008.

38-1305 Provisional environmental health specialist, defined. Provisional environmental health specialist means a person who is qualified by education but does not have at least two full years of experience in the field of environmental sanitation and is certified in accordance with the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 526.
Operative date December 1, 2008.

38-1306 Registered environmental health specialist, defined. Registered environmental health specialist means a person who has the educational requirements and has had experience in the field of environmental sanitation required by section 38-1308 and is certified in accordance with the Environmental Health Specialists Practice Act.

Source: Laws 2007, LB463, § 527.
Operative date December 1, 2008.

38-1307 Board; members; qualifications; terms. The board shall consist of six members. One member shall be a public member who meets the requirements of section 38-165. Each of the other members shall have been engaged in environmental health for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be a registered environmental health specialist. At the expiration of the three-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1963, c. 400, § 6, p. 1281; Laws 1969, c. 578, § 1, p. 2326; Laws 1981, LB 204, § 127; Laws 1987, LB 473, § 49; Laws 1991, LB 703, § 43; Laws 1993, LB 375, § 4; Laws 1994, LB 1223, § 46; Laws 1996, LB 1044, § 667; R.S.1943, (2003), § 71-3706; Laws 2007, LB296, § 579; Laws 2007, LB463, § 528.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 579, with LB 463, section 528, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1308 Certification; qualifications; exception; term. A person shall be eligible for certification as an environmental health specialist if he or she has graduated with a baccalaureate or higher degree from an accredited college or university, has satisfactorily completed at least forty-five quarter hours or thirty semester hours of academic work in the basic natural sciences, has been employed full time as an environmental health specialist for a period not less than two years, and has passed an examination approved by the board, except that a person holding a degree higher than a baccalaureate degree who has satisfactorily completed at least forty-five quarter hours or thirty semester hours of academic work in the basic natural sciences may qualify when employed as an environmental health specialist for a period of not less than one year.

Source: Laws 1963, c. 400, § 3, p. 1279; Laws 1989, LB 344, § 28; Laws 1991, LB 703, § 39; Laws 1997, LB 752, § 182; Laws 2003, LB 242, § 117; R.S.1943, (2003), § 71-3703; Laws 2007, LB463, § 529.
Operative date December 1, 2008.

38-1309 Provisional environmental health specialist. Any person meeting the educational qualifications of section 38-1308 but who does not meet the experience

requirements of such section may make application for certification as a provisional environmental health specialist.

Source: Laws 1963, c. 400, § 4, p. 1280; Laws 1989, LB 344, § 29; Laws 1991, LB 703, § 40; Laws 2003, LB 242, § 118; R.S.1943, (2003), § 71-3704; Laws 2007, LB463, § 530.
Operative date December 1, 2008.

38-1310 Registered environmental health specialist; provisional environmental health specialist; certification; term; renewal; continuing competency requirements. (1) Certification as a registered environmental health specialist shall expire biennially. Certification as a provisional environmental health specialist shall be valid for one year and may be renewed for two additional one-year periods. In no case shall certification for a provisional environmental health specialist exceed a three-year period.

(2) Each registered environmental health specialist in active practice in the state shall complete continuing competency activities as approved by the board and adopted and promulgated by the department in rules and regulations as a prerequisite for the registrant's next subsequent biennial renewal. 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 registered environmental health specialist may select as an alternative to continuing education.

Source: Laws 1963, c. 400, § 10, p. 1283; Laws 1969, c. 578, § 4, p. 2328; Laws 1983, LB 542, § 3; Laws 1986, LB 926, § 61; Laws 1988, LB 1100, § 145; Laws 1991, LB 703, § 47; Laws 1994, LB 1210, § 122; Laws 1994, LB 1223, § 49; Laws 1997, LB 307, § 189; Laws 2002, LB 1021, § 80; Laws 2003, LB 242, § 121; R.S.1943, (2003), § 71-3710; Laws 2007, LB463, § 531.
Operative date December 1, 2008.

38-1311 Registered environmental health specialist; application for certification; continuing competency requirements. An applicant for certification as a registered environmental health specialist who has met the education and examination requirements in section 38-1308, who passed the examination more than three years prior to the time of application for certification, and who is not practicing at the time of application for certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 532.
Operative date December 1, 2008.

38-1312 Registered environmental health specialist; reciprocity; continuing competency requirements. An applicant for certification as a registered environmental health 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 certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 533.
Operative date December 1, 2008.

38-1313 Fees. The department shall establish and collect fees for credentialing under the Environmental Health Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 534.
Operative date December 1, 2008.

38-1314 Title or abbreviation; use; when. Only a person who holds a valid current certificate for use in this state shall have the right and privilege of using the title Registered Environmental Health Specialist and to use the abbreviation R.E.H.S. after his or her name.

Source: Laws 1963, c. 400, § 13, p. 1285; Laws 1991, LB 703, § 48; R.S.1943, (2003), § 71-3713; Laws 2007, LB463, § 535.
Operative date December 1, 2008.

38-1315 Certified environmental health specialist; misrepresentation; unlawful. It shall be unlawful for any person to represent himself or herself as a registered environmental health specialist without being duly certified and the holder of a currently valid certificate issued by the department. An individual holding a certificate of registration as a registered environmental health specialist on December 1, 2008, shall be deemed to be certified as a registered environmental health specialist on such date. An individual holding a certificate of registration as a trainee on December 1, 2008, shall be deemed to be certified as a provisional environmental health specialist on such date.

Source: Laws 1963, c. 400, § 14, p. 1285; Laws 1991, LB 703, § 49; R.S.1943, (2003), § 71-3714; Laws 2007, LB463, § 536.
Operative date December 1, 2008.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Section.

38-1401 Act, how cited. Sections 38-1401 to 38-1428 shall be known and may be cited as the Funeral Directing and Embalming Practice Act.

Source: Laws 2007, LB463, § 537.
Operative date December 1, 2008.

38-1402 Definitions, where found. For purposes of the Funeral Directing and Embalming Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1403 to 38-1413 apply.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35; R.S.1943, (2003), § 71-1301; Laws 2007, LB296, § 465; Laws 2007, LB463, § 538.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 465, with LB 463, section 538, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1403 Accredited school of mortuary science, defined. Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the board.

Source: Laws 2007, LB463, § 539.
Operative date December 1, 2008.

38-1404 Apprentice, defined. Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice.

Source: Laws 2007, LB463, § 540.
Operative date December 1, 2008.

38-1405 Board, defined. Board means the Board of Funeral Directing and Embalming.

Source: Laws 2007, LB463, § 541.
Operative date December 1, 2008.

38-1406 Branch establishment, defined. Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted.

Source: Laws 2007, LB463, § 542.
Operative date December 1, 2008.

38-1407 Casket, defined. Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets.

Source: Laws 2007, LB463, § 543.
Operative date December 1, 2008.

38-1408 Crematory authority, defined. Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation.

Source: Laws 2007, LB463, § 544.
Operative date December 1, 2008.

38-1409 Embalming, defined. (1) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming.

(2) Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming.

(3) The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either

by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities.

Source: Laws 2007, LB463, § 545.
Operative date December 1, 2008.

38-1410 Funeral directing, defined. Funeral directing means (1) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (2) providing for or maintaining a funeral establishment, or (3) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing.

Source: Laws 2007, LB463, § 546.
Operative date December 1, 2008.

38-1411 Funeral establishment, defined. Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.

Source: Laws 2007, LB463, § 547.
Operative date December 1, 2008.

38-1412 Licensure examination, defined. Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination.

Source: Laws 2007, LB463, § 548.
Operative date December 1, 2008.

38-1413 Supervision, defined. Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 2007, LB463, § 549.
Operative date December 1, 2008.

38-1414 Funeral directing and embalming; license; requirements. (1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English,

(ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c. 271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550. Operative date December 1, 2008.

38-1415 Examinations; requirements. When the applicant has satisfied the department that he or she either has completed a full course of instruction in an accredited school of mortuary science or has completed all but the final semester of such course, the applicant shall be eligible to take the national standardized examination. The applicant shall pass such examination before beginning his or her twelve-month apprenticeship or the final six months thereof. When the applicant has satisfied the department that he or she has the qualifications specified in section 38-1416, he or she shall be eligible to take the state jurisprudence and vital statistic forms examination. A grade of seventy-five or above on each part of the licensure examination shall be a passing grade.

Source: Laws 1927, c. 167, § 94, p. 480; C.S.1929, § 71-1303; Laws 1931, c. 123, § 1, p. 356; Laws 1937, c. 155, § 2, p. 613; C.S.Supp.,1941, § 71-1303; R.S.1943, § 71-196; Laws 1955, c. 271, § 2, p. 853; R.S.1943, (1990), § 71-196; Laws 1993, LB 187, § 15; R.S.1943, (2003), § 71-1303; Laws 2007, LB463, § 551. Operative date December 1, 2008.

38-1416 Apprenticeship; apprentice license; examination. (1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed thirty-nine of the sixty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552. Operative date December 1, 2008.

38-1417 Teaching and demonstration; use of dead human bodies. The board shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Source: Laws 1927, c. 167, § 97, p. 481; C.S.1929, § 71-1306; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1306; R.S.1943, § 71-199; R.S.1943, (1990), § 71-199; Laws 1993, LB 187, § 17; Laws 1999, LB 828, § 153; R.S.1943, (2003), § 71-1305; Laws 2007, LB463, § 553. Operative date December 1, 2008.

Cross Reference

State Anatomical Board requirements, see sections 71-1001 to 71-1007.

38-1418 Violations; evidence. The finding of chemical substances, fluids, or gases ordinarily used in embalming or any trace thereof in a dead human body, the use of which is prohibited except by a licensed funeral director and embalmer, or the placing thereof upon a dead human body by other than a licensed funeral director and embalmer shall constitute prima facie evidence of the violation of the Funeral Directing and Embalming Practice Act.

Source: Laws 1927, c. 167, § 98, p. 481; C.S.1929, § 71-1307; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1307; R.S.1943, § 71-1,100; R.S.1943, (1990), § 71-1,100; Laws 1993, LB 187, § 18; R.S.1943, (2003), § 71-1306; Laws 2007, LB463, § 554.
Operative date December 1, 2008.

38-1419 Funeral establishment; qualifications; relocation; change of manager; change of name. (1) In order for a funeral establishment to be licensed, it shall employ as its manager a licensed funeral director and embalmer who shall be responsible for all transactions conducted in the funeral establishment, except that any person holding a valid license as a funeral director may serve as a manager of a funeral establishment. The manager shall maintain and operate the funeral establishment in accordance with all laws, rules, and regulations relating thereto.

(2) If the applicant for a funeral establishment license proposes to operate more than one establishment, a separate application and fee shall be required for each location.

(3) A funeral establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(4) A funeral establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of a manager, the application shall be made immediately following such death. No license shall be issued under this subsection by the department until the original license has been surrendered.

(5) A funeral establishment desiring to change its name shall request such change to the department at least thirty days prior to the designated change in name.

Source: Laws 1957, c. 295, § 3, p. 1060; Laws 1973, LB 515, § 15; Laws 1980, LB 94, § 6; Laws 1986, LB 926, § 49; Laws 1987, LB 473, § 37; Laws 1992, LB 1019, § 61; Laws 1993, LB 187, § 20; Laws 2003, LB 242, § 98; R.S.1943, (2003), § 71-1327; Laws 2007, LB463, § 555.
Operative date December 1, 2008.

38-1420 Branch establishment; application for license; qualifications; relocation; change of manager; change of name. (1) If the applicant for a branch establishment license proposes to operate more than one branch establishment, a separate application and fee shall be required for each location.

(2) A branch establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(3) A branch establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of the manager, the establishment shall make application immediately after such death. No license shall be issued by the department under this subsection until the original license has been surrendered.

(4) A branch establishment desiring to change its name shall apply to the department at least thirty days prior to the designated change in name.

Source: Laws 1993, LB 187, § 21; Laws 2003, LB 242, § 99; R.S.1943, (2003), § 71-1327.01; Laws 2007, LB463, § 556.
Operative date December 1, 2008.

38-1421 Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 557.
Operative date December 1, 2008.

38-1422 Fees. The department shall establish and collect fees for credentialing under the Funeral Directing and Embalming Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 558.
Operative date December 1, 2008.

38-1423 Prohibited acts. Any person, partnership, limited liability company, firm, corporation, association, or other organization which (1) without having complied with the Funeral Directing and Embalming Practice Act and without having first obtained a license (a) engages directly or indirectly in the business of funeral directing and embalming, (b) holds himself, herself, or itself out to the public as a funeral director and embalmer, or (c) performs or attempts to perform any of the services of a funeral establishment or branch establishment or of a funeral director and embalmer relating to the disposition of dead human bodies or (2) continues to perform such services after the license has expired or has been revoked or suspended shall be dealt with in the same manner as outlined in section 38-1,118. Each day so engaged in such business shall constitute and be deemed a separate offense.

Source: Laws 1957, c. 295, § 7, p. 1062; Laws 1973, LB 515, § 16; Laws 1977, LB 39, § 158; Laws 1980, LB 94, § 9; Laws 1986, LB 926, § 50; Laws 1988, LB 1100, § 101; Laws 1991, LB 10, § 5; Laws 1992, LB 1019, § 62; Laws 1993, LB 121, § 423; Laws 1993, LB 187, § 23; Laws 1994, LB 1223, § 33; Laws 2003, LB 242, § 100; R.S.1943, (2003), § 71-1331; Laws 2007, LB463, § 559.
Operative date December 1, 2008.

38-1424 Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed. (1) In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Funeral Directing and Embalming 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:

(a) Solicitation of dead human bodies by the credential holder or his or her agents, assistants, or employees, either prior to or following death;

(b) The purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business;

(c) Using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased;

(d) Soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery;

(e) Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying such item as used;

(f) Violations of any state law, municipal ordinance, or rule or regulation of the department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies;

(g) Refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof; or

(h) Taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

(2) An applicant or a credential holder shall be subject to the penalty provisions of this section if found guilty of any of the following:

(a) Paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business;

(b) The buying of a business of any person, firm, or corporation, or the paying of a commission to any person, firm, or corporation or to any hospital or any institution where death occurs or to any hospital superintendent, nurse, intern, or other employee, whether directly or indirectly; or

(c) Willful malpractice.

(3) Any funeral director and embalmer who commits any of the acts or things prohibited by this section or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor.

(4) Nothing in this section shall be construed to prohibit a licensed funeral director and embalmer from engaging in sales of funeral goods or services under the Burial Pre-Need Sale Act.

Source: Laws 1957, c. 295, § 9, p. 1063; Laws 1963, c. 411, § 1, p. 1331; Laws 1980, LB 94, § 11; Laws 1987, LB 473, § 40; Laws 1988, LB 1100, § 103; Laws 1993, LB 187, § 25; R.S.1943, (2003), § 71-1333; Laws 2007, LB463, § 560.
Operative date December 1, 2008.

Cross Reference

Burial Pre-Need Sale Act, see section 12-1101.

38-1425 Deceased persons; control of remains; interment; liability. (1) Except as otherwise provided in section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless

other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

(a) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

(b) The surviving spouse of the decedent;

(c) If the surviving spouse is incompetent or not available or if there is no surviving spouse, the decedent's surviving adult children. If there is more than one adult child, any adult child, after confirmation in writing of the notification of all other adult children, may direct the manner of disposition unless the funeral establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(d) The decedent's surviving parents;

(e) The persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(f) A guardian of the person of the decedent at the time of such person's death;

(g) The personal representative of the decedent;

(h) The State Anatomical Board or county board in the case of an indigent person or any other person the disposition of whose remains is the responsibility of the state or county; or

(i) A representative of an entity described in section 38-1426 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in section 38-1426.

(2) A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person.

(3) The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (1)(h) of this section, upon the county in which death occurred from funds available for such purpose.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561. Operative date December 1, 2008.

38-1426 Final disposition; instructions; remains of deceased person; disposition; liability. (1) A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such

remains be given to a teaching institution, university, college, or legally licensed hospital, to the director, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

(2) If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(3) This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

(4) A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the director shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; R.S.1943, (2003), § 71-1340; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1427 Autopsy; written authorization; removal of organs; when performed. A written authorization for an autopsy given by the survivor or survivors, as enumerated in section 38-1425, having the right to control the disposition of remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the director or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; R.S.1943, (2003), § 71-1341; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1428 Funeral director and embalmer; principal services; statement of costs. A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual cost of the services including the total actual costs, shall be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. For purposes of this section principal services shall include, but not be limited to, the casket, outer receptacle, facilities and equipment, professional services, nonlocal transportation, clothing, an itemization of all cash advances, and sales tax. A copy of such statement, signed by the person to whom it was tendered, shall be retained in the records of the funeral director and embalmer for a period of at least two years.

Source: Laws 1980, LB 94, § 17; Laws 1993, LB 187, § 32; R.S.1943, (2003), § 71-1346; Laws 2007, LB463, § 564.
Operative date December 1, 2008.

ARTICLE 15

HEARING AID INSTRUMENT DISPENSERS AND FITTERS PRACTICE ACT

Section.

38-1501 Act, how cited. Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Aid Instrument Dispensers and Fitters Practice Act.

Source: Laws 2007, LB463, § 565.
Operative date December 1, 2008.

38-1502 Definitions, where found. For purposes of the Hearing Aid Instrument Dispensers and Fitters 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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 589, with LB 463, section 566, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1503 Board, defined. Board means the Board of Hearing Aid Instrument Dispensers and Fitters.

Source: Laws 2007, LB463, § 567.
Operative date December 1, 2008.

38-1504 Hearing aid, defined. Hearing aid 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. A hearing aid shall also be known as a hearing instrument.

Source: Laws 2007, LB463, § 568.
Operative date December 1, 2008.

38-1505 Practice of fitting hearing aids, defined. Practice of fitting hearing aids 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 aids. 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.
Operative date December 1, 2008.

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 aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

Source: Laws 2007, LB463, § 570.
Operative date December 1, 2008.

38-1507 Temporary license, defined. Temporary license means a license issued while the applicant is in training to become a licensed hearing aid instrument dispenser and fitter.

Source: Laws 2007, LB463, § 571.
Operative date December 1, 2008.

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 hearing aid instrument dispensers and fitters, 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.
Operative date December 1, 2008.

38-1509 Sale or fitting of hearing aids; license required. (1) No person shall engage in the sale of or practice of fitting hearing aids 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 aids unless he or she holds an unsuspended, unrevoked license issued by the department as provided in the Hearing Aid Instrument Dispensers and Fitters Practice Act. A license shall confer upon the holder the right to select, fit, and sell hearing aids.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice shall also be licensed 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 aids 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 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.

Note: The changes made by LB 247, section 52, became operative June 1, 2007. The changes made by LB 247, section 70, and LB 463 became operative December 1, 2008.

38-1510 Applicability of act. (1) The Hearing Aid Instrument Dispensers and Fitters 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 aids if such person or organization employing such person does not sell hearing aids or 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 aids unless the person to whom the authority is delegated is licensed 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.
Operative date December 1, 2008.

38-1511 Sale; conditions. (1) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid 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 aid furnished, and clearly stating the full terms of sale. If an aid 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 aid instrument dispenser that any examination or representation made by a licensed hearing aid instrument dispenser and fitter in connection with the fitting and selling of this hearing aid 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.
Operative date December 1, 2008.

38-1512 License; examination; conditions. (1) Any person may obtain a license under the Hearing Aid Instrument Dispensers and Fitters 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 license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure, 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.

Note: The changes made by LB 247, section 53, became operative June 1, 2007. The changes made by LB 247, section 71, and LB 463 became operative December 1, 2008.

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 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 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.
Operative date December 1, 2008.

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 aids:

(a) Basic physics of sound;

(b) The anatomy and physiology of the ear; and

(c) The function of hearing aids; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(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 aid; 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.
Operative date December 1, 2008.

38-1515 Applicant for licensure; continuing competency requirements. An applicant for licensure to practice hearing aid instrument dispensing and fitting 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.
Operative date December 1, 2008.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements. An applicant for licensure to practice hearing aid instrument dispensing and fitting 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.
Operative date December 1, 2008.

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 Aid Instrument Dispensers and Fitters 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 aid to a child under the age of sixteen who has not been examined and cleared for hearing aid 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 aid 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 Aid Instrument Dispensers and Fitters 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.
Operative date December 1, 2008.

38-1518 Fees. The department shall establish and collect fees for credentialing activities under the Hearing Aid Instrument Dispensers and Fitters 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.
Operative date December 1, 2008.

ARTICLE 16

LICENSED PRACTICAL NURSE-CERTIFIED PRACTICE ACT

Section.

38-1601 Act, how cited. Sections 38-1601 to 38-1625 shall be known and may be cited as the Licensed Practical Nurse-Certified Practice Act.

Source: Laws 1993, LB 536, § 20; R.S.1943, (2003), § 71-1772; Laws 2007, LB463, § 583. Operative date December 1, 2008.

38-1602 Purposes of act. The purposes of the Licensed Practical Nurse-Certified Practice Act are (1) to provide a means by which licensed practical nurses-certified may perform certain activities related to intravenous therapy, (2) to provide for approval of certification courses to prepare licensed practical nurses-certified, and (3) to ensure the health and safety of the general public.

Source: Laws 1993, LB 536, § 21; Laws 2003, LB 213, § 1; R.S.1943, (2003), § 71-1773; Laws 2007, LB463, § 584.
Operative date December 1, 2008.

38-1603 Definitions, where found. For purposes of the Licensed Practical Nurse-Certified Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1604 to 38-1612 apply.

Source: Laws 2007, LB463, § 585.
Operative date December 1, 2008.

38-1604 Administration, defined. Administration includes observing, initiating, monitoring, discontinuing, maintaining, regulating, adjusting, documenting, assessing, planning, intervening, and evaluating.

Source: Laws 2007, LB463, § 586.
Operative date December 1, 2008.

38-1605 Approved certification course, defined. Approved certification course means a course for the education and training of a licensed practical nurse-certified which the board has approved.

Source: Laws 2007, LB463, § 587.
Operative date December 1, 2008.

38-1606 Board, defined. Board means the Board of Nursing.

Source: Laws 2007, LB463, § 588.
Operative date December 1, 2008.

38-1607 Direct supervision, defined. Direct supervision means that the responsible licensed practitioner or registered nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately.

Source: Laws 2007, LB463, § 589.
Operative date December 1, 2008.

38-1608 Initial venipuncture, defined. Initial venipuncture means the initiation of intravenous therapy based on a new order from a licensed practitioner for an individual for whom a previous order for intravenous therapy was not in effect.

Source: Laws 2007, LB463, § 590.
Operative date December 1, 2008.

38-1609 Intravenous therapy, defined. Intravenous therapy means the therapeutic infusion or injection of substances through the venous system.

Source: Laws 2007, LB463, § 591.
Operative date December 1, 2008.

38-1610 Licensed practical nurse-certified, defined. Licensed practical nurse-certified means a licensed practical nurse who meets the standards established pursuant to section 38-1615 and who holds a valid license issued by the department pursuant to the Licensed Practical Nurse-Certified Practice Act.

Source: Laws 2007, LB463, § 592.
Operative date December 1, 2008.

38-1611 Licensed practitioner, defined. Licensed practitioner means any person authorized by state law to prescribe intravenous therapy.

Source: Laws 2007, LB463, § 593.
Operative date December 1, 2008.

38-1612 Pediatric patient, defined. Pediatric patient means a patient who is both younger than eighteen years old and under the weight of thirty-five kilograms.

Source: Laws 2007, LB463, § 594.
Operative date December 1, 2008.

38-1613 Licensed practical nurse-certified; activities authorized. A licensed practical nurse-certified may perform the following activities related to the administration of intravenous therapy under the direction of a licensed practitioner or registered nurse:

(1) Calculate the rate of intravenous fluid infusions, except for pediatric patients;

(2) Perform venipuncture, excluding jugular, for purposes of peripheral intravenous therapy, except (a) for pediatric patients or (b) with devices which exceed three inches in length. Direct supervision by a licensed practitioner or registered nurse shall be required for initial venipuncture for purposes of peripheral intravenous therapy;

(3) Except in the case of a pediatric patient, administer approved medications by approved methods. Approved methods of administration and approved medications shall be those for which nursing interventions are routine and predictable in nature related to individual responses and adverse reactions and as defined in rules and regulations of the board;

(4) Flush intravenous ports with heparin solution or saline solution; and

(5) Add pain medication solutions to a patient-controlled infusion pump.

Source: Laws 1993, LB 536, § 24; Laws 2000, LB 1115, § 64; Laws 2003, LB 213, § 4; R.S.1943, (2003), § 71-1776; Laws 2007, LB463, § 595.
Operative date December 1, 2008.

38-1614 Applicability of act. The Licensed Practical Nurse-Certified Practice Act shall not prohibit the performance of the activities identified in section 38-1613 by an unlicensed person if performed (1) in an emergency situation, (2) by a legally qualified person from another state employed by the federal government and performing official duties in this state, or (3) by a person enrolled in an approved certification course if performed as part of that approved certification course.

Source: Laws 1993, LB 536, § 37; R.S.1943, (2003), § 71-1789; Laws 2007, LB463, § 596.
Operative date December 1, 2008.

38-1615 Licensure; requirements. (1) In order to obtain a license as a licensed practical nurse-certified, an individual shall:

(a) Have a current license to practice as a licensed practical nurse in Nebraska;

(b) Have successfully completed an approved certification course within one year before application for licensure; and

(c) Have satisfactorily passed an examination approved by the board.

(2) There is no minimum age requirement for licensure as a licensed practical nurse-certified.

(3) An individual holding a certificate as a licensed practical nurse-certified on December 1, 2008, shall be deemed to be holding a license under this section on such date. The certificate holder may continue to practice under such certificate as a license until the next renewal date.

Source: Laws 1993, LB 536, § 25; Laws 2000, LB 1115, § 65; Laws 2003, LB 242, § 109; R.S.1943, (2003), § 71-1777; Laws 2007, LB463, § 597.
Operative date December 1, 2008.

38-1616 License; renewal; term. A license to practice as a licensed practical nurse-certified shall be renewed biennially and shall expire on the same date as the applicant's Nebraska license to practice as a licensed practical nurse.

Source: Laws 1993, LB 536, § 26; Laws 1997, LB 752, § 176; Laws 2000, LB 1115, § 66; Laws 2003, LB 242, § 110; R.S.1943, (2003), § 71-1778; Laws 2007, LB463, § 598.
Operative date December 1, 2008.

38-1617 License; renewal; continuing competency activities. Continuing competency activities for renewal of a license to practice as a licensed practical nurse-certified shall relate to intravenous therapy and may be included in the continuing competency activities required under the Nurse Practice Act for renewal of a license as a licensed practical nurse.

Source: Laws 1993, LB 536, § 27; Laws 1995, LB 563, § 44; Laws 2002, LB 1021, § 65; Laws 2003, LB 213, § 5; R.S.1943, (2003), § 71-1779; Laws 2007, LB463, § 599.
Operative date December 1, 2008.

Cross Reference

Nurse Practice Act, see section 38-2201.

38-1618 Expiration of license; restoration. To restore a license to practice as a licensed practical nurse-certified after it expires, such individual shall be required to meet the requirements for licensure which are in effect at the time that he or she wishes to restore the license.

Source: Laws 1993, LB 536, § 40; R.S.1943, (2003), § 71-1792; Laws 2007, LB463, § 600.
Operative date December 1, 2008.

38-1619 Fees. The department shall establish and collect fees for credentialing under the Licensed Practical Nurse-Certified Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 601.
Operative date December 1, 2008.

38-1620 Use of title and abbreviation authorized. An individual licensed to practice as a licensed practical nurse-certified may use the title licensed practical nurse-certified and the abbreviation L.P.N.-C.

Source: Laws 1993, LB 536, § 38; R.S.1943, (2003), § 71-1790; Laws 2007, LB463, § 602.
Operative date December 1, 2008.

38-1621 Intravenous therapy; performance of activities authorized; limitations; assessment required. (1) Administration of intravenous therapy shall be a responsibility of the registered nurse as ordered by a licensed practitioner.

(2) A licensed practical nurse-certified may, under the direction of a licensed practitioner or registered nurse, perform the activities identified in section 38-1613 after the licensed practitioner or registered nurse has performed a physical assessment of the patient.

(3) A licensed practical nurse-certified shall perform appropriate activities associated with central venous lines only under direct supervision. Activities associated with central venous lines that are appropriate for the licensed practical nurse-certified to perform shall be defined in rules and regulations. A licensed practitioner or registered nurse shall provide direct supervision whenever a licensed practical nurse-certified is performing activities associated with central venous lines.

(4) A licensed practitioner or registered nurse need not be on the premises in order for the licensed practical nurse-certified to perform directed activities except for (a) initial venipuncture for purposes of peripheral intravenous therapy and (b) central-line activities.

(5) A licensed practitioner or registered nurse shall be present at least once during each twenty-four-hour interval and more frequently when a significant change in therapy or client condition has occurred to assess the client when the licensed practical nurse-certified is performing the activities identified in section 38-1613.

Source: Laws 1993, LB 536, § 23; Laws 2000, LB 1115, § 63; Laws 2003, LB 213, § 3; R.S.1943, (2003), § 71-1775; Laws 2007, LB463, § 603.
Operative date December 1, 2008.

38-1622 Curriculum for training; department; duties; approved certification course; requirements. (1) The board shall adopt and promulgate rules and regulations defining competencies required for enrollment in an approved certification course and acceptable means for measuring the competencies. Before enrolling in a course, a licensed practical nurse shall successfully demonstrate the prerequisite competencies.

(2) The department with the advice of the board shall prescribe a curriculum for training licensed practical nurses-certified, establish an examination, and adopt and promulgate rules and regulations setting minimum standards for approved certification courses, including faculty qualifications, record keeping, faculty-to-student ratios, and other aspects of

conducting such courses. The department may approve certification courses developed by associations, educational institutions, or other entities if such courses meet the requirements of this section and the criteria prescribed in the rules and regulations.

(3) An approved certification course shall be no less than forty-eight hours of classroom instruction and shall include a clinical competency component as defined in rules and regulations of the board. Classroom instruction shall include the following: (a) State laws governing the administration of intravenous therapy; (b) anatomy and physiology of the circulatory system; (c) pharmacology; (d) fluid and electrolyte balance; (e) procedures and precautions in performing intravenous therapy; (f) types of equipment for intravenous therapy; (g) actions, interactions, and effects of medications in intravenous therapy; (h) documentation; and (i) other subjects relevant to the administration of intravenous therapy. An approved certification course shall be supervised by a registered nurse with a minimum of three years of clinical experience immediately prior to supervision of the course. An educator may be a physician, pharmacist, or other qualified professional. Nothing in this section shall be deemed to prohibit any courses from exceeding the minimum requirements.

Source: Laws 1993, LB 536, § 28; Laws 2000, LB 1115, § 67; Laws 2003, LB 213, § 6; R.S.1943, (2003), § 71-1780; Laws 2007, LB463, § 604.
Operative date December 1, 2008.

38-1623 Approval of course; procedure. (1) An applicant for approval to conduct a certification course shall file an application and shall present proof satisfactory to the department that the proposed course meets the requirements of the Licensed Practical Nurse-Certified Practice Act and the rules and regulations adopted and promulgated under the act.

(2) The department may conduct such inspections or investigations of applicants for approval to conduct a certification course and of approved certification courses as may be necessary to ensure compliance with the act and the rules and regulations.

Source: Laws 1993, LB 536, § 29; Laws 2000, LB 1115, § 68; R.S.1943, (2003), § 71-1781; Laws 2007, LB463, § 605.
Operative date December 1, 2008.

38-1624 Approved certification course; disciplinary actions authorized. The department may deny, revoke, or suspend or otherwise take disciplinary measures against an approved certification course in accordance with section 38-196 for violation of the Licensed Practical Nurse-Certified Practice Act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1993, LB 536, § 31; R.S.1943, (2003), § 71-1783; Laws 2007, LB463, § 606.
Operative date December 1, 2008.

38-1625 Approval to conduct certification course; reinstatement. A course provider whose approval to conduct a certification course has been suspended or revoked may apply for reinstatement at such time as the certification course meets the requirements

of the Licensed Practical Nurse-Certified Practice Act and rules and regulations adopted and promulgated under the act and will continue to meet such requirements.

Source: Laws 1993, LB 536, § 33; R.S.1943, (2003), § 71-1785; Laws 2007, LB463, § 607.
Operative date December 1, 2008.

ARTICLE 17

MASSAGE THERAPY PRACTICE ACT

Section.
38-1701. Act, how cited.
38-1702. Definitions, where found.
38-1703. Approved massage therapy school, defined.
38-1704. Board, defined.
38-1705. Massage therapist, defined.
38-1706. Massage therapy, defined.
38-1707. Massage therapy establishment, defined.
38-1708. Massage therapy; persons excepted.
38-1709. School or establishment; massage therapist; license required.
38-1710. Massage therapy license; applicant; qualifications.
38-1711. Massage therapy; temporary license; requirements.
38-1712. Reciprocity.
38-1713. Fees.
38-1714. Unprofessional conduct.
38-1715. Rules and regulations.

38-1701 Act, how cited. Sections 38-1701 to 38-1715 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608.
Operative date December 1, 2008.

38-1702 Definitions, where found. For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609.
Operative date December 1, 2008.

38-1703 Approved massage therapy school, defined. Approved massage therapy school means (1) one which is approved by the board, (2) one which requires for admission a diploma from an accredited high school or its equivalent, (3) one which has attached to its staff a regularly licensed physician and employs one or more competent massage therapists

as instructors, and (4) one which has a minimum requirement of a continuous course of study and training of not less than one thousand hours distributed over a term of not less than nine months. Such study and training shall consist of one hundred hours of each of the following: Physiology; anatomy; massage; pathology; hydrotherapy; hygiene and practical demonstration; and health service management. The remaining three hundred hours shall be obtained in subject areas related to the clinical practice of massage therapy.

Source: Laws 2007, LB463, § 610.
Operative date December 1, 2008.

38-1704 Board, defined. Board means the Board of Massage Therapy.

Source: Laws 2007, LB463, § 611.
Operative date December 1, 2008.

38-1705 Massage therapist, defined. Massage therapist means a person licensed to practice massage therapy.

Source: Laws 2007, LB463, § 612.
Operative date December 1, 2008.

38-1706 Massage therapy, defined. Massage therapy means the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. Massage therapy does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

Source: Laws 2007, LB463, § 613.
Operative date December 1, 2008.

38-1707 Massage therapy establishment, defined. Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy.

Source: Laws 2007, LB463, § 614.
Operative date December 1, 2008.

38-1708 Massage therapy; persons excepted. The Massage Therapy Practice Act shall not be construed to include the following classes of persons:

(1) Licensed physicians and surgeons, osteopathic physicians, chiropractors, registered nurses, practical nurses, cosmetologists, estheticians, nail technicians, physical therapists, barbers, and other persons credentialed under the Uniform Credentialing Act who are exclusively engaged in the practice of their respective professions;

(2) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) Students performing massage therapy services when they render such services within the scope of an approved massage therapy school under the supervision of a licensed massage therapist; and

(4) Individuals who hold a current license as a massage therapist in another state and who travel with and provide massage therapy services to theatrical groups, entertainers, or athletic organizations.

Source: Laws 1955, c. 273, § 2, p. 862; Laws 1957, c. 297, § 1, p. 1070; R.S.1943, (1986), § 71-2702; Laws 1988, LB 1100, § 133; Laws 1989, LB 342, § 28; Laws 1990, LB 1064, § 15; R.S.1943, (2003), § 71-1,279; Laws 2007, LB463, § 615.
Operative date December 1, 2008.

38-1709 School or establishment; massage therapist; license required. No person shall engage in the practice of massage therapy or the operation of a massage therapy school or establishment unless he or she obtains a license from the department for that purpose.

Source: Laws 1955, c. 273, § 11, p. 866; Laws 1957, c. 297, § 7, p. 1073; R.S.1943, (1986), § 71-2712; Laws 1988, LB 1100, § 137; Laws 2002, LB 1021, § 31; R.S.1943, (2003), § 71-1,280; Laws 2007, LB463, § 616.
Operative date December 1, 2008.

38-1710 Massage therapy license; applicant; qualifications. Every applicant for an initial license to practice massage therapy shall (1) present satisfactory evidence that he or she has attained the age of nineteen years, (2) present proof of graduation from an approved massage therapy school, and (3) pass an examination prescribed by the board.

Source: Laws 1955, c. 273, § 5, p. 863; Laws 1957, c. 297, § 3, p. 1071; Laws 1973, LB 512, § 1; R.S.1943, (1986), § 71-2705; Laws 1988, LB 1100, § 135; Laws 1999, LB 828, § 143; R.S.1943, (2003), § 71-1,281; Laws 2007, LB463, § 617.
Operative date December 1, 2008.

38-1711 Massage therapy; temporary license; requirements. A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

Source: Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618.
Operative date December 1, 2008.

38-1712 Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Massage Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 619.
Operative date December 1, 2008.

38-1713 Fees. The department shall establish and collect fees for credentialing under the Massage Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 620.
Operative date December 1, 2008.

38-1714 Unprofessional conduct. For purposes of the Massage Therapy Practice Act, unprofessional conduct includes the conduct listed in section 38-179 and the provision by a massage therapist of sexual stimulation as part of massage therapy.

Source: Laws 2007, LB463, § 621.
Operative date December 1, 2008.

38-1715 Rules and regulations. The department shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622.
Operative date December 1, 2008.

ARTICLE 18

MEDICAL NUTRITION THERAPY PRACTICE ACT

Section.

38-1801 Act, how cited. Sections 38-1801 to 38-1816 shall be known and may be cited as the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 623.
Operative date December 1, 2008.

38-1802 Legislative findings. (1) The Legislature finds that:

(a) The unregulated practice of medical nutrition therapy can clearly harm or endanger the health, safety, and welfare of the public;

(b) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by a less cost-effective means than state regulation of the practice of medical nutrition therapy. The Legislature also finds that medical nutrition therapists must exercise independent judgment and that professional education, training, and experience are required to make such judgment.

(2) The Legislature further finds that the practice of medical nutrition therapy in the State of Nebraska is not sufficiently regulated for the protection of the health, safety, and welfare of the public. It declares that this is a matter of statewide concern and it shall be the policy of the State of Nebraska to promote high standards of professional performance by those persons representing themselves as licensed medical nutrition therapists.

Source: Laws 1988, LB 557, § 1; Laws 1995, LB 406, § 20; R.S.1943, (2003), § 71-1,285; Laws 2007, LB463, § 624.
Operative date December 1, 2008.

38-1803 Definitions, where found. For purposes of the Medical Nutrition Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1804 to 38-1810 apply.

Source: Laws 1988, LB 557, § 2; Laws 1995, LB 406, § 21; Laws 1999, LB 828, § 146; R.S.1943, (2003), § 71-1,286; Laws 2007, LB463, § 625.
Operative date December 1, 2008.

38-1804 Assessment, defined. Assessment means the process of evaluating the nutritional status of patients. The assessment includes review and analysis of medical and diet

histories, biochemical lab values, and anthropometric measurements to determine nutritional status and appropriate nutritional treatment.

Source: Laws 2007, LB463, § 626.
Operative date December 1, 2008.

38-1805 Board, defined. Board means the Board of Medical Nutrition Therapy.

Source: Laws 2007, LB463, § 627.
Operative date December 1, 2008.

38-1806 Consultation, defined. Consultation means conferring with a physician regarding the activities of the licensed medical nutrition therapist.

Source: Laws 2007, LB463, § 628.
Operative date December 1, 2008.

38-1807 General nutrition services. General nutrition services includes, but is not limited to:

(1) Identifying the nutritional needs of individuals and groups in relation to normal nutritional requirements; and

(2) Planning, implementing, and evaluating nutrition education programs for individuals and groups in the selection of food to meet normal nutritional needs throughout the life cycle.

Source: Laws 2007, LB463, § 629.
Operative date December 1, 2008.

38-1808 Licensed medical nutrition therapist, defined. Licensed medical nutrition therapist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the department pursuant to the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 630.
Operative date December 1, 2008.

38-1809 Medical nutrition therapy, defined. Medical nutrition therapy means the assessment of the nutritional status of patients. Medical nutrition therapy involves the assessment of patient nutritional status followed by treatment, ranging from diet modification to specialized nutrition support, such as determining nutrient needs for enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment.

Source: Laws 2007, LB463, § 631.
Operative date December 1, 2008.

38-1810 Patient, defined. Patient means a person with a disease, illness, injury, or medical condition for which nutritional interventions are an essential component of standard care.

Source: Laws 2007, LB463, § 632.
Operative date December 1, 2008.

38-1811 Board; membership; qualifications. The board shall consist of three professional members, one physician, and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

Source: Laws 2007, LB463, § 633.
Operative date December 1, 2008.

38-1812 License required; activities not subject to act. No person shall practice medical nutrition therapy unless he or she is licensed for such purpose pursuant to the Uniform Credentialing Act. The practice of medical nutrition therapy shall not include:

(1) Any person credentialed in this state pursuant to the Uniform Credentialing Act and engaging in such profession or occupation for which he or she is credentialed;

(2) Any student engaged in an academic program under the supervision of a licensed medical nutrition therapist as part of a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board, and who is designated with a title which clearly indicates the person's status as a student or trainee;

(3) Persons practicing medical nutrition therapy who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) Persons practicing medical nutrition therapy who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree, and are in this state for the purpose of:

(a) Consultation if the practice in this state is limited to consultation; or

(b) Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board;

(5) Persons performing general nutrition services incidental to the practice of the profession insofar as it does not exceed the scope of their education and training;

(6) Persons who market or distribute food, food materials, or dietary supplements, including persons employed in health food stores, or persons engaged in the advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet general nutrition needs;

(7) Persons conducting classes or disseminating information related to general nutrition services;

(8) Persons who care for the sick in accordance with the tenets and practices of any bona fide church or religious denomination;

(9) Persons who provide information and instructions regarding food intake or exercise as a part of a weight control program; and

(10) Persons with advanced postgraduate degrees involved in academic teaching or research.

Source: Laws 1988, LB 557, § 3; Laws 1995, LB 406, § 22; R.S.1943, (2003), § 71-1,287; Laws 2007, LB463, § 634.
Operative date December 1, 2008.

38-1813 Licensed medical nutrition therapist; qualifications. A person shall be qualified to be a licensed medical nutrition therapist if such person furnishes evidence that he or she:

(1) Has met the requirements for and is a registered dietitian by the American Dietetic Association or an equivalent entity recognized by the board;

(2)(a) Has satisfactorily passed an examination approved by the board;

(b) Has received a baccalaureate degree from an accredited college or university with a major course of study in human nutrition, food and nutrition, dietetics, or an equivalent major course of study approved by the board; and

(c) Has satisfactorily completed a program of supervised clinical experience approved by the department. Such clinical experience shall consist of not less than nine hundred hours of a planned continuous experience in human nutrition, food and nutrition, or dietetics under the supervision of an individual meeting the qualifications of this section; or

(3)(a) Has satisfactorily passed an examination approved by the board; and

(b)(i) Has received a master's or doctorate degree from an accredited college or university in human nutrition, nutrition education, food and nutrition, or public health nutrition or in an equivalent major course of study approved by the board; or

(ii) Has received a master's or doctorate degree from an accredited college or university which includes a major course of study in clinical nutrition. Such course of study shall consist of not less than a combined two hundred hours of biochemistry and physiology and not less than seventy-five hours in human nutrition.

For purposes of this section, accredited college or university means an institution currently listed with the United States Secretary of Education as accredited. Applicants who have obtained their education outside of the United States and its territories shall have their academic degrees validated as equivalent to a baccalaureate or master's degree conferred by a United States regionally accredited college or university.

The practice of medical nutrition therapy shall be performed under the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635.
Operative date December 1, 2008.

38-1814 Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the

requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 636.
Operative date December 1, 2008.

38-1815 Fees. The department shall establish and collect fees for credentialing under the Medical Nutrition Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 637.
Operative date December 1, 2008.

38-1816 Act, how construed. Nothing in the Medical Nutrition Therapy Practice Act shall be construed to permit a licensed medical nutrition therapist to practice any other profession regulated under the Uniform Credentialing Act.

Source: Laws 1988, LB 557, § 9; Laws 1994, LB 853, § 1; Laws 1995, LB 406, § 29; R.S.1943, (2003), § 71-1,293; Laws 2007, LB463, § 638.
Operative date December 1, 2008.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Section.

38-1901 Act, how cited. Sections 38-1901 to 38-1920 shall be known and may be cited as the Medical Radiography Practice Act.

Source: Laws 2007, LB463, § 639.
Operative date December 1, 2008.

38-1902 Definitions, where found. For purposes of the Medical Radiography Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1903 to 38-1913 apply.

Source: Laws 2007, LB463, § 640.
Operative date December 1, 2008.

38-1903 Board, defined. Board means the Board of Medical Radiography.

Source: Laws 2007, LB463, § 641.
Operative date December 1, 2008.

38-1904 Interpretative fluoroscopic procedures, defined. Interpretative fluoroscopic procedures means the use of radiation in continuous mode to provide information, data, and film or hardcopy images for diagnostic review and interpretation by a licensed practitioner as the images are being produced.

Source: Laws 2007, LB463, § 642.
Operative date December 1, 2008.

38-1905 Licensed practitioner, defined. Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician.

Source: Laws 2007, LB463, § 643.
Operative date December 1, 2008.

38-1906 Limited radiographer, defined. Limited radiographer means a person licensed to practice medical radiography pursuant to section 38-1916. Limited radiographer does not include a person certified under section 38-3012.

Source: Laws 2007, LB463, § 644.
Operative date December 1, 2008.

38-1907 Medical radiographer, defined. Medical radiographer means a person licensed to practice medical radiography pursuant to section 38-1915.

Source: Laws 2007, LB463, § 645.
Operative date December 1, 2008.

38-1908 Medical radiography, defined. Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, adjustment or manipulation of X-ray systems and accessories including image receptors, positioning of

patients, processing of films, and any other action that materially affects the radiation dose to patients.

Source: Laws 2007, LB463, § 646.
Operative date December 1, 2008.

38-1909 Radiation, defined. Radiation means ionizing radiation and nonionizing radiation as follows:

(1) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(2) Nonionizing radiation means (a) any electromagnetic radiation which can be generated during the operation of electronic products as defined in section 71-3503 to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (b) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as defined in section 71-3503 as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment.

Source: Laws 2007, LB463, § 647.
Operative date December 1, 2008.

38-1910 Radiation-generating equipment, defined. Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material.

Source: Laws 2007, LB463, § 648.
Operative date December 1, 2008.

38-1911 Sources of radiation, defined. Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material.

Source: Laws 2007, LB463, § 649.
Operative date December 1, 2008.

38-1912 Undesirable radiation, defined. Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB463, § 650.
Operative date December 1, 2008.

38-1913 X-ray system, defined. X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the

necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

Source: Laws 2007, LB463, § 651.
Operative date December 1, 2008.

38-1914 Board; members; qualifications; terms; meetings. The board shall consist of four medical radiographers and one limited radiographer. Of the first four medical radiographers appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years. The first limited radiographer shall be appointed for a term of five years. Thereafter each appointment shall be for a term of five years. The board shall meet at least two times per calendar year.

Source: Laws 2005, LB 453, § 2; R.S.Supp.,2006, § 71-3512; Laws 2007, LB463, § 652.
Operative date December 1, 2008.

38-1915 Medical radiographer; requirements. (1) A person licensed by the department, with the recommendation of the board, as a medical radiographer may practice medical radiography on any part of the human anatomy for interpretation by and under the direction of a licensed practitioner, excluding interpretative fluoroscopic procedures. An applicant for a license as a medical radiographer shall:

(a) Complete an educational program in radiography approved by the board pursuant to subsection (1) of section 38-1918;

(b) Complete an application in accordance with the Uniform Credentialing Act; and

(c) Successfully complete an examination approved by the board.

(2) Presentation of proof of registration in radiography with the American Registry of Radiologic Technologists is proof of meeting the requirements of subdivisions (1)(a) and (c) of this section.

Source: Laws 1987, LB 390, § 23; Laws 1995, LB 406, § 46; Laws 1997, LB 752, § 181; Laws 2002, LB 1021, § 75; Laws 2006, LB 994, § 104; R.S.Supp.,2006, § 71-3515.01; Laws 2007, LB463, § 653.
Operative date December 1, 2008.

38-1916 Limited radiographer; requirements; specific anatomical region. (1) A person licensed by the department, with the recommendation of the board, as a limited radiographer may practice medical radiography on limited regions of the human anatomy, using only routine radiographic procedures, for the interpretation by and under the direction of a licensed practitioner, excluding computed tomography, the use of contrast media, and the use of fluoroscopic or mammographic equipment. An applicant for a license as a limited radiographer shall successfully complete an examination approved by the board, as described in subdivision (2)(a) of section 38-1918 and at least one of the anatomical regions listed in subdivision (2)(b) of such section or successfully complete an examination approved by the department, as described in subsection (3) of section 38-1918.

(2) Each license issued shall be specific to the anatomical region or regions for which the applicant has passed an approved examination, except that an applicant may be licensed in the anatomical region of Abdomen upon successful passage of the examinations described in subdivisions (2)(a) and (2)(b)(iv) of section 38-1918 and upon a finding by the department, with the recommendation of the board, that continued provision of service for a community would be in jeopardy.

Source: Laws 2007, LB463, § 654.
Operative date December 1, 2008.

38-1917 Student; provisions not applicable; temporary medical radiographer license; term. The requirements of sections 38-1915 and 38-1916 do not apply to a student while enrolled and participating in an educational program in medical radiography who, as a part of an educational program, applies X-rays to humans while under the supervision of the licensed practitioners or medical radiographers associated with the educational program. Students who have completed at least twelve months of the training course described in subsection (1) of section 38-1918 may apply for licensure as a temporary medical radiographer. Temporary medical radiographer licenses shall expire eighteen months after issuance and shall not be renewed. Persons licensed as temporary medical radiographers shall be permitted to perform the duties of a limited radiographer licensed in all anatomical regions of subdivision (2)(b) of section 38-1918 and Abdomen.

Source: Laws 2007, LB463, § 655.
Operative date December 1, 2008.

38-1918 Educational programs; testing; requirements. (1) The educational program for medical radiographers shall consist of twenty-four months of instruction in radiography approved by the board which includes, but is not limited to, radiographic procedures, imaging equipment, image production and evaluation, film processing, radiation physics, radiation protection, radiation biology, radiographic pathology, and quality assurance activities. The board shall recognize equivalent courses of instruction successfully completed by individuals who are applying for licensure as medical radiographers when determining if the requirements of section 38-1915 have been met.

(2) The examination for limited radiographers shall include, but not be limited to:

(a) Radiation protection, equipment maintenance and operation, image production and evaluation, and patient care and management; and

(b) The anatomy of, and positioning for, specific regions of the human anatomy. The anatomical regions shall include at least one of the following:

(i) Chest;

(ii) Extremities;

(iii) Skull and sinus;

(iv) Spine; or

(v) Ankle and foot.

(3) The examination for limited radiographers in bone density shall include, but not be limited to, basic concepts of bone densitometry, equipment operation and quality control, radiation safety, and dual X-ray absorptiometry (DXA) scanning of the finger, heel, forearm, lumbar spine, and proximal femur.

(4) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations regarding the examinations required in sections 38-1915 and 38-1916. Such rules and regulations shall provide for (a) the administration of examinations based upon national standards, such as the Examination in Radiography from the American Registry of Radiologic Technologists for medical radiographers, the Examination for the Limited Scope of Practice in Radiography or the Bone Densitometry Equipment Operator Examination from the American Registry of Radiologic Technologists for limited radiographers, or equivalent examinations that, as determined by the board, meet the standards for educational and psychological testing as recommended by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, (b) procedures to be followed for examinations, (c) the method of grading and the passing grades for such examinations, (d) security protection for questions and answers, and (e) for medical radiographers, the contents of such examination based on the course requirements for medical radiographers prescribed in subsection (1) of this section. Any costs incurred in determining the extent to which examinations meet the examining standards of this subsection shall be paid by the individual or organization proposing the use of such examination.

(5) No applicant for a license as a limited radiographer may take the examination for licensure, or for licensure for any specific anatomical region, more than three times without first waiting a period of one year after the last unsuccessful attempt of the examination and submitting proof to the department of completion of continuing competency activities as required by the board for each subsequent attempt.

Source: Laws 1987, LB 390, § 24; Laws 1990, LB 1064, § 21; Laws 1995, LB 406, § 47; Laws 1996, LB 1044, § 656; Laws 2000, LB 1115, § 74; Laws 2002, LB 1021, § 76; Laws 2003, LB 242, § 115; Laws 2006, LB 994, § 105; R.S.Supp.,2006, § 71-3515.02; Laws 2007, LB463, § 656.
Operative date December 1, 2008.

38-1919 Fees. The department shall establish and collect fees for credentialing under the Medical Radiography Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 657.
Operative date December 1, 2008.

38-1920 Dental hygienists and dental assistants; exemptions from act. (1) Persons authorized under the Dentistry Practice Act to practice as dental hygienists and dental assistants who meet the requirements of section 38-1135 shall not be required to be licensed under the Medical Radiography Practice Act.

(2) The department may exempt certain users of sources of radiation from licensing requirements established under the Medical Radiography Practice Act when the board finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(3) Individuals who are currently licensed in the State of Nebraska as podiatrists, chiropractors, dentists, physicians and surgeons, osteopathic physicians, physician assistants, and veterinarians shall be exempt from the rules and regulations of the department pertaining to the qualifications of persons for the use of X-ray radiation-generating equipment operated for diagnostic purposes.

Source: Laws 2007, LB463, § 658.
Operative date December 1, 2008.

Cross Reference

Dentistry Practice Act, see section 38-1101.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section.

38-2001 Act, how cited. Sections 38-2001 to 38-2061 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659.
Operative date December 1, 2008.

38-2002 Definitions, where found. For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660.
Operative date December 1, 2008.

38-2003 Accredited hospital, defined. Accredited hospital means a hospital accredited by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 661.
Operative date December 1, 2008.

38-2004 Accredited school or college of medicine, defined. An accredited school or college of medicine means one approved by the board, and such school or college shall meet and maintain generally minimum standards approved by the board. Such minimum standards shall apply equally to all accredited schools, and any school to be accredited shall permit inspections by the department.

A school or college of osteopathic medicine and surgery fulfilling all such requirements shall not be refused standing as an accredited medical school because it may also specialize in giving instruction according to any special system of healing.

Source: Laws 1927, c. 167, § 103, p. 483; C.S.1929, § 71-1404; Laws 1943, c. 150, § 21, p. 549; R.S.1943, § 71-1,105; Laws 1969, c. 563, § 8, p. 2295; Laws 1989, LB 342, § 16; Laws 1996, LB 1044, § 422; Laws 1999, LB 828, § 81; R.S.1943, (2003), § 71-1,105; Laws 2007, LB463, § 662.
Operative date December 1, 2008.

38-2005 Accredited school or college of osteopathic medicine, defined. An accredited school or college of osteopathic medicine means one approved by the board. An accredited school or college of osteopathic medicine shall meet and maintain general minimum standards approved by the board. The minimum standards shall apply equally to all such accredited schools and colleges. Any school or college seeking accreditation shall permit inspections by the department.

Nothing in this section shall be construed to prohibit the department, with the recommendation of the board, from accepting accreditation of a school or college of osteopathic medicine by the American Osteopathic Association as evidence of meeting the specified requirements of this section or the equivalent thereof.

Source: Laws 1927, c. 167, § 118, p. 489; C.S.1929, § 71-1704; R.S.1943, § 71-1,140; Laws 1969, c. 565, § 4, p. 2301; Laws 1981, LB 451, § 12; Laws 1989, LB 342, § 25; Laws 1996, LB 1044, § 445; Laws 1999, LB 828, § 106; R.S.1943, (2003), § 71-1,140; Laws 2007, LB463, § 663.
Operative date December 1, 2008.

38-2006 Acupuncture, defined. Acupuncture means the insertion, manipulation, and removal of acupuncture needles and the application of manual, mechanical, thermal, electrical, and electromagnetic treatment to such needles at specific points or meridians on the human body in an effort to promote, maintain, and restore health and for the treatment of disease, based on acupuncture theory. Acupuncture may include the recommendation of therapeutic exercises, dietary guidelines, and nutritional support to promote the effectiveness of the acupuncture treatment. Acupuncture does not include manipulation or mobilization of or adjustment to the spine, extraspinal manipulation, or the practice of medical nutrition therapy.

Source: Laws 2001, LB 270, § 8; Laws 2003, LB 242, § 80; R.S.1943, (2003), § 71-1,344; Laws 2007, LB463, § 664.
Operative date December 1, 2008.

38-2007 Acupuncturist, defined. Acupuncturist means a person engaged in the practice of acupuncture.

Source: Laws 2007, LB463, § 665.
Operative date December 1, 2008.

38-2008 Approved program, defined. Approved program means a program for the education of physician assistants which the board formally approves.

Source: Laws 2007, LB463, § 666.
Operative date December 1, 2008.

38-2009 Backup physician, defined. Backup physician means a physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician shall be subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician.

Source: Laws 2007, LB463, § 667.
Operative date December 1, 2008.

38-2010 Board, defined. Board means the Board of Medicine and Surgery.

Source: Laws 2007, LB463, § 668.
Operative date December 1, 2008.

38-2011 Committee, defined. Committee means the Physician Assistant Committee created in section 38-2056.

Source: Laws 2007, LB463, § 669.
Operative date December 1, 2008.

38-2012 Fellowship, defined. Fellowship means a program of supervised educational training, approved by the board, in a medical specialty or subspecialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 670.
Operative date December 1, 2008.

38-2013 Graduate medical education or residency, defined. Graduate medical education or residency means a program of supervised educational training, approved by the board, in a medical specialty at an accredited hospital, an accredited school or college of medicine, or an accredited school or college of osteopathic medicine, that follows the completion of undergraduate medical education.

Source: Laws 2007, LB463, § 671.
Operative date December 1, 2008.

38-2014 Physician assistant, defined. Physician assistant means any person who graduates from a program approved by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agency and the board, who satisfactorily completes a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician or group of physicians approved by the department, with the recommendation of the board, to supervise such assistant.

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.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2015 Proficiency examination, defined. Proficiency examination means the initial proficiency examination approved by the board for the licensure of physician assistants, including, but not limited to, the examination administered by the National Commission on Certification of Physician Assistants or other national organization established for such purpose that is recognized by the board.

Source: Laws 2007, LB463, § 673.
Operative date December 1, 2008.

38-2016 Refresher course, defined. Refresher course means a planned program of supervised educational training, approved by the board, that provides a review of medical knowledge and skills for the purpose of the enhancement of clinical competency.

Source: Laws 2007, LB463, § 674.
Operative date December 1, 2008.

38-2017 Supervising physician, defined. Supervising physician means (1) a board-approved physician who utilizes a licensed physician assistant or (2) a backup physician.

Source: Laws 2007, LB463, § 675.
Operative date December 1, 2008.

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 if the board finds that such contact is sufficient to provide quality medical care. The level of supervision may vary by geographic location as provided in section 38-2047.

Source: Laws 2007, LB463, § 676.
Operative date December 1, 2008.

38-2019 Temporary educational permit, defined. Temporary educational permit means a permit to practice medicine and surgery, osteopathic medicine and surgery, or any of their allied specialties in graduate medical education, a fellowship, or a refresher course.

Source: Laws 2007, LB463, § 677.
Operative date December 1, 2008.

38-2020 Trainee, defined. Trainee means any person who is currently enrolled in an approved program.

Source: Laws 2007, LB463, § 678.
Operative date December 1, 2008.

38-2021 Unprofessional conduct, defined. Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908; and

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (9) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

Source: Laws 2007, LB463, § 679.
Operative date December 1, 2008.

38-2022 Visiting faculty permit, defined. Visiting faculty permit means a permit for a physician qualified by virtue of previous medical training and experience to teach students of medicine, to conduct research, or both.

Source: Laws 2007, LB463, § 680.
Operative date December 1, 2008.

38-2023 Board; membership; qualifications. The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state.

Source: Laws 2007, LB463, § 681.
Operative date December 1, 2008.

38-2024 Practice of medicine and surgery, defined. For purposes of the Uniform Credentialing Act, and except as provided in section 38-2025 or as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

(1) Persons who publicly profess to be physicians or surgeons or publicly profess to assume the duties incident to the practice of medicine, surgery, or any of their branches;

(2) Persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery;

(3) Persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings;

(4) Persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person;

(5) Persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings;

(6) Persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation and who indicate that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and

(7) Persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state.

Source: Laws 1927, c. 167, § 100, p. 482; C.S.1929, § 71-1401; Laws 1943, c. 150, § 18, p. 546; R.S.1943, § 71-1,102; Laws 1969, c. 563, § 1, p. 2291; Laws 1997, LB 452, § 1; Laws 2006, LB 833, § 2; R.S.Supp.,2006, § 71-1,102; Laws 2007, LB463, § 682.
Operative date December 1, 2008.

Cross Reference

Alcoholic liquor, possession and use in practice, see section 53-168.06.
Physician's lien for services, see section 52-401 et seq.

38-2025 Medicine and surgery; practice; persons excepted. The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

(1) Persons rendering gratuitous services in cases of emergency;

(2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;

(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;

(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;

(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;

(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed and practicing under and in accordance with the Podiatry Practice Act;

(15) Psychologists practicing their profession when licensed and practicing under and in accordance with the Psychology Practice Act;

(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;

(17) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(18) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens; and

(19) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683.
Operative date December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Chiropractic Practice Act, see section 38-801.
Dentistry Practice Act, see section 38-1101.
Health Care Facility Licensure Act, see section 71-401.
Optometry Practice Act, see section 38-2601.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements. Each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 332, with LB 463, section 684, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2027 Department; waiver of requirements; authorized; conditions; disciplinary action authorized. (1) The department, with the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (2) of section 38-2026, if the applicant has served at least one year of graduate medical education approved by the board and if the following conditions are met:

(a) The applicant meets all other qualifications for a license to practice medicine and surgery;

(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and

(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

(2) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the director, with the recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, with the recommendation of the board, may grant or deny such application or may continue the license with limitations.

(3) In addition to any other grounds for disciplinary action against the license contained in the Uniform Credentialing Act, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license.

Source: Laws 2007, LB463, § 685.
Operative date December 1, 2008.

38-2028 Reciprocity; requirements. An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District

of Columbia shall meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.

Source: Laws 2007, LB463, § 686.
Operative date December 1, 2008.

38-2029 Practice as osteopathic physicians, defined. (1) For purposes of the Uniform Credentialing Act, the following classes of persons shall be deemed to be engaged in practice as osteopathic physicians:

(a) Persons publicly professing to be osteopathic physicians or publicly professing to assume the duties incident to the practice of osteopathic physicians; and

(b) Persons who are graduates of a school or college of osteopathic medicine and who treat human ailments by that system of the healing art which was advocated and taught by the school or college of osteopathic medicine from which such person graduated at the time of his or her graduation as determined by the department, with the recommendation of the board.

(2) No license issued to osteopathic physicians under the Medicine and Surgery Practice Act shall authorize the person so licensed to perform surgical procedures except those usually performed by general practitioners, as determined by the department, with the recommendation of the board.

(3) Nothing in this section shall be construed to prohibit an osteopathic physician licensed in accordance with the act from serving as an assistant in surgery more complex than that usually performed by general practitioners, as determined by the department, with the recommendation of the board, when such surgery is performed by an osteopathic physician licensed pursuant to section 38-2032 or by an osteopathic physician or doctor of medicine licensed pursuant to section 38-2026. In no event shall this section or section 38-2032 be construed as authorizing any physician to engage in any procedure which he or she is not qualified by training to perform according to the standards prevailing in the State of Nebraska at the time.

(4) Persons who are licensed to practice as osteopathic physicians who have demonstrated to the department, with the recommendation of the board, that they have acquired adequate training and knowledge for such purpose and have been so authorized by the department, with the recommendation of the board, may prescribe and administer drugs and medicines.

Source: Laws 1927, c. 167, § 115, p. 488; C.S.1929, § 71-1701; R.S.1943, § 71-1,137; Laws 1969, c. 565, § 1, p. 2299; Laws 1972, LB 1498, § 2; Laws 1981, LB 451, § 9; Laws 1989, LB 342, § 21; Laws 1996, LB 1044, § 442; Laws 1999, LB 828, § 103; R.S.1943, (2003), § 71-1,137; Laws 2007, LB463, § 687.
Operative date December 1, 2008.

38-2030 Practice as osteopathic physicians; persons excepted. For purposes of the Uniform Credentialing Act, the following classes of persons shall not be construed as engaged in practice as osteopathic physicians:

(1) Licensed physicians and surgeons, podiatrists, nurses, and dentists who are exclusively engaged in the practice of their respective professions;

(2) Physicians and surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment; and

(3) Osteopathic physicians licensed in another state when incidentally called into this state in consultation with a licensed physician or an osteopathic physician licensed in this state.

Source: Laws 1927, c. 167, § 116, p. 488; C.S.1929, § 71-1702; R.S.1943, § 71-1,138; Laws 1961, c. 337, § 13, p. 1057; Laws 1969, c. 565, § 2, p. 2300; Laws 1989, LB 342, § 22; R.S.1943, (2003), § 71-1,138; Laws 2007, LB463, § 688.
Operative date December 1, 2008.

38-2031 Osteopathic physician; license; requirements. Every applicant for a license to practice as an osteopathic physician shall (1) present proof of having completed a four-year course in an accredited high school or its equivalent, (2) present proof of having graduated from an accredited school or college of osteopathic medicine, and (3) pass an examination, as approved by the board, in the science of osteopathy and the practice of the same.

Source: Laws 1927, c. 167, § 117, p. 489; C.S.1929, § 71-1703; R.S.1943, § 71-1,139; Laws 1981, LB 451, § 10; Laws 1989, LB 342, § 23; Laws 1996, LB 1044, § 443; Laws 1997, LB 752, § 159; Laws 1999, LB 828, § 104; R.S.1943, (2003), § 71-1,139; Laws 2007, LB463, § 689.
Operative date December 1, 2008.

38-2032 Osteopathic physician; license; additional requirements. (1) If a person (a) has graduated from an accredited school or college of osteopathic medicine since January 1, 1963, (b) meets all statutory requirements for licensure as an osteopathic physician, (c) has served one year of internship or its equivalent at an institution approved for such training by the board, (d) after his or her internship, has taken and passed the examination provided in section 38-2026, and (e) presents proof satisfactory to the department, with the recommendation of the board, that he or she, within the three years immediately preceding the application for licensure, (i) has been in the active practice of the profession of osteopathic medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (ii) has had one year of graduate medical education as described in subdivision (1)(c) of this section, (iii) has completed continuing education in medicine and surgery or osteopathic medicine and surgery approved by the board, (iv) has completed a refresher course in medicine and surgery or osteopathic medicine and surgery approved by the board, or (v) has completed the special purposes examination approved by the board, such person, upon making application therefor, shall receive a license as a Doctor of Osteopathic Medicine and Surgery which shall qualify such person to practice osteopathic medicine and surgery.

(2) With respect to persons who have graduated from an accredited school or college of osteopathic medicine prior to January 1, 1963, the department, with the recommendation of the board, may issue a license to practice osteopathic medicine and surgery to any such graduate who meets all the requirements for issuance of such license except graduation from an accredited school or college of osteopathic medicine after January 1, 1963.

Source: Laws 1963, c. 408, § 1, p. 1310; Laws 1969, c. 565, § 3, p. 2301; Laws 1981, LB 451, § 11; Laws 1989, LB 342, § 24; Laws 1996, LB 1044, § 444; Laws 1999, LB 828, § 105; Laws 2002, LB 1062, § 33; R.S.1943, (2003), § 71-1,139.01; Laws 2007, LB463, § 690.
Operative date December 1, 2008.

38-2033 Osteopathic physician; license; scope. (1) With respect to licenses issued pursuant to sections 38-2031 and 38-2032 and any renewals thereof, the department shall designate the extent of such practice as follows:

(a) License to practice as an osteopathic physician; or

(b) License to practice osteopathic medicine and surgery.

(2) Every license issued under sections 38-2031 and 38-2032 shall confer upon the holder thereof the right to practice osteopathic medicine and surgery as taught in the schools or colleges of osteopathic medicine recognized by the American Osteopathic Association in the manner and to the extent provided by such license.

Source: Laws 1927, c. 167, § 119, p. 490; C.S.1929, § 71-1705; R.S.1943, § 71-1,141; Laws 1969, c. 565, § 5, p. 2302; Laws 1989, LB 342, § 26; Laws 1996, LB 1044, § 446; R.S.1943, (2003), § 71-1,141; Laws 2007, LB296, § 343; Laws 2007, LB463, § 691.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 343, with LB 463, section 691, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2034 Applicant; reciprocity; requirements. An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.

Source: Laws 2007, LB463, § 692.
Operative date December 1, 2008.

38-2035 Applicant; examination; retaking examination. Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within

four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

Source: Laws 2007, LB463, § 693.
Operative date December 1, 2008.

38-2036 Physician locum tenens; issuance authorized; conditions; term. A physician locum tenens may be issued by the department, with the recommendation of the board, to an individual who holds an active license to practice medicine and surgery or osteopathic medicine and surgery in another state when circumstances indicate a need for the issuance of a physician locum tenens in the State of Nebraska. A physician locum tenens may be issued for a period not to exceed ninety days in any twelve-month period.

Source: Laws 2007, LB463, § 694.
Operative date December 1, 2008.

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 may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695.
Operative date December 1, 2008.

38-2038 Temporary educational or visiting faculty permit; use. The holder of a temporary educational permit or of a visiting faculty permit shall be entitled to practice medicine and surgery and any of its allied specialties, including prescribing medicine and controlled substances, while serving in graduate medical education, a fellowship, or a refresher course in the State of Nebraska, but neither the holder of a temporary educational permit nor the holder of a visiting faculty permit shall be qualified to engage in the practice of medicine and surgery or any of its allied specialties within the State of Nebraska and outside of the assigned graduate medical education, fellowship, refresher course, teaching program, or research program.

Source: Laws 1969, c. 560, § 9, p. 2283; Laws 1971, LB 150, § 6; R.S.1943, (2003), § 71-1,107.03; Laws 2007, LB463, § 696.
Operative date December 1, 2008.

38-2039 Temporary educational permit; application; department; duties. Before granting any temporary educational permit, the department, with the recommendation of the board, shall ascertain that an authorized provider of graduate medical education, a fellowship, or a refresher course has requested the issuance of a temporary educational permit for an

applicant to participate in its graduate medical education, fellowship, or refresher course for the period involved.

Source: Laws 1969, c. 560, § 13, p. 2284; Laws 1971, LB 150, § 10; Laws 1996, LB 1044, § 430; R.S.1943, (2003), § 71-1,107.07; Laws 2007, LB296, § 336; Laws 2007, LB463, § 697.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 336, with LB 463, section 697, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2040 Visiting faculty permit; application; department; duties. Before a visiting faculty permit is issued, the department, with the recommendation of the board, shall determine that an accredited school or college of medicine in the State of Nebraska has requested issuance of a visiting faculty permit for the individual involved to serve as a member of the faculty of such school or college of medicine. Any application for issuing a visiting faculty permit shall outline the faculty duties to be performed pursuant to the permit.

Source: Laws 1969, c. 560, § 14, p. 2284; Laws 1971, LB 150, § 11; Laws 1996, LB 1044, § 431; R.S.1943, (2003), § 71-1,107.08; Laws 2007, LB296, § 337; Laws 2007, LB463, § 698.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 337, with LB 463, section 698, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2041 Temporary educational or visiting faculty permits; recommend, when. The recommendation of the board for the issuance of any temporary educational permits or any visiting faculty permits shall be made at regular meetings of such board, but the chairperson or one other member of the board shall have the power to recommend the issuance of such permits between the meetings of the board.

Source: Laws 1969, c. 560, § 15, p. 2285; Laws 1971, LB 150, § 12; Laws 1999, LB 828, § 87; R.S.1943, (2003), § 71-1,107.09; Laws 2007, LB463, § 699.
Operative date December 1, 2008.

38-2042 Temporary educational or visiting faculty permit; duration; renewal. The duration of any temporary educational or visiting faculty permit shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed annually as long as the holder of a temporary educational permit is still enrolled and participating in the program of supervised educational training or as long as the holder of a visiting faculty permit is still teaching students of medicine or conducting research.

Source: Laws 1969, c. 560, § 12, p. 2284; Laws 1971, LB 150, § 9; Laws 1989, LB 342, § 18; Laws 1996, LB 1044, § 429; R.S.1943, (2003), § 71-1,107.06; Laws 2007, LB296, § 335; Laws 2007, LB463, § 700.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 335, with LB 463, section 700, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2043 Temporary educational or visiting faculty permit; disciplinary action; grounds. Any temporary educational or visiting faculty permit may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit.

Source: Laws 1969, c. 560, § 17, p. 2285; Laws 1971, LB 150, § 14; Laws 1996, LB 1044, § 433; Laws 1999, LB 828, § 89; R.S.1943, (2003), § 71-1,107.11; Laws 2007, LB463, § 701.
Operative date December 1, 2008.

38-2044 Temporary educational permit; to whom issued; qualifications. A temporary educational permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if the applicant, in addition to meeting the other requirements for the issuance of such permit, presents to the department a copy of a permanent certificate of the Educational Commission on Foreign Medical Graduates currently effective and relating to such applicant or, in lieu thereof, such credentials as are necessary to certify to successful passage of the Visa Qualifying Examination, or its successor or equivalent examination, required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services or, if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received a permanent certificate attesting to the same, and provides such credentials as are necessary to certify the same to the department, at such time as the department, with the recommendation of the board, determines, and, if so directed by the department, passes an examination approved by the board to measure his or her clinical competence to proceed to advanced training before advancing beyond the initial phase of the training program, and if such examination is required, pays the required fee.

Source: Laws 1969, c. 560, § 19, p. 2286; Laws 1971, LB 150, § 15; Laws 1974, LB 811, § 10; Laws 1978, LB 761, § 2; Laws 1991, LB 2, § 12; Laws 1996, LB 1044, § 434; Laws 1999, LB 828, § 90; Laws 2003, LB 242, § 41; R.S.1943, (2003), § 71-1,107.13; Laws 2007, LB463, § 702.
Operative date December 1, 2008.

38-2045 Visiting faculty permit; issuance; conditions. A visiting faculty permit may be issued to graduates of foreign schools or colleges of medicine or to individuals if an accredited college or school of medicine in the State of Nebraska has requested that such permit be issued. It shall not be necessary for such applicant to provide a certificate of the Educational Commission on Foreign Medical Graduates as required in the case of temporary educational permits. If directed by the department an applicant for a visiting faculty permit may be required to pass an examination approved by the board to measure his or her clinical competence to practice medicine and if such examination is required the applicant shall pay the required fee.

Source: Laws 1971, LB 150, § 16; Laws 1974, LB 811, § 11; Laws 1996, LB 1044, § 435; Laws 1999, LB 828, § 91; Laws 2003, LB 242, § 42; R.S.1943, (2003), § 71-1,107.14; Laws 2007, LB463, § 703. Operative date December 1, 2008.

38-2046 Physician assistants; legislative findings. The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of such physician assistants by physicians.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704. Operative date December 1, 2008.

Cross Reference

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047 Physician assistants; services performed; supervision requirements. (1) Notwithstanding any other provision of law, a physician assistant may perform medical services when he or she renders such services under the supervision of a licensed physician or group of physicians approved by the department, with the recommendation of the board, in the specialty area or areas for which the physician assistant shall be trained or experienced. Any physician assistant licensed under the Medicine and Surgery Practice Act to perform services may perform those services only:

(a) In the office of the supervising physician where such physician maintains his or her primary practice;

(b) In any other office which is operated by the supervising physician with the personal presence of the supervising physician. The physician assistant may function without the personal presence of the supervising physician in an office other than where such physician maintains his or her primary practice as provided in subsection (2) of this section and when approved on an individual basis by the department, with the recommendation of the board. Any such approval shall require site visits by the supervising physician, regular reporting to the supervising physician by the physician assistant, and arrangements for supervision at all times by the supervising physician which are sufficient to provide quality medical care;

(c) In a hospital, with the approval of the governing board of such hospital, where the supervising physician is a member of the staff and the physician assistant is subject to the rules and regulations of the hospital. Such rules and regulations may include, but need not be limited to, reasonable requirements that physician assistants and the supervising physician maintain professional liability insurance with such coverage and limits as may be established by the hospital governing board, upon the recommendation of the medical staff; or

(d) On calls outside such offices, when authorized by the supervising physician and with the approval of the governing board of any affected hospital.

(2) 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. The board 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.

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.
Operative date December 1, 2008.

Cross Reference

Liability limitations:
Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2048 Physician assistants; trainee; services performed. Notwithstanding any other provision of law, a trainee may perform medical services when he or she renders such services within the scope of an approved program.

Source: Laws 1973, LB 101, § 4; R.S.Supp.,1973, § 85-179.07; Laws 1985, LB 132, § 4; R.S.1943, (2003), § 71-1,107.18; Laws 2007, LB463, § 706.
Operative date December 1, 2008.

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 physician assistant programs approved by the board and have satisfactorily completed 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 for the education and training of physician assistants but 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. Upon a showing of good cause, the temporary license may be extended by the department, with the recommendation of the board.

(3) The board may recognize groups of specialty classifications of training for physician assistants. These classifications shall reflect the training and experience of the physician assistant. The physician assistant may receive training in one or more such classifications which shall be shown on the license issued.

(4) 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.
Operative date December 1, 2008.

38-2050 Physician assistants; department; guidelines; formulate. (1) The department, with the recommendation of the board, shall formulate guidelines for the consideration of applications by a licensed physician or physicians to supervise physician assistants. Any application made by a physician or physicians shall include all of the following:

(a) The qualifications, including related experience, of the physician assistant intended to be employed;

(b) The professional background and specialty of the physician or physicians; and

(c) A description by the physician of his or her, or physicians of their, practice and the way in which the assistant or assistants shall be utilized. The application shall provide for the personal presence of the supervising physician in conformance with requirements established by the department, with the recommendation of the board, under section 38-2047.

(2) The department, with the recommendation of the board, shall approve an application by a licensed physician to supervise a physician assistant when the department, with the recommendation of the board, is satisfied that the proposed assistant is a graduate of an approved program, has satisfactorily completed a proficiency examination, and is fully qualified to perform medical services under the responsible supervision of a licensed physician. The public shall be adequately protected by the arrangement proposed in the application.

(3) The department, with the recommendation of the board, shall approve no more than two physician assistants for any practicing physician, except that this limitation may be waived by the department, with the recommendation of the board, upon a showing of good cause by the practicing physician.

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.
Operative date December 1, 2008.

38-2051 Physician assistants; termination of supervision; notice to department. If the supervision of a physician assistant is terminated by the physician or physician assistant, the physician shall notify the department of such termination. A physician who thereafter assumes the responsibility for such supervision shall obtain a certificate to supervise a physician assistant from the department prior to the use of the physician assistant in the practice of medicine.

Source: Laws 1973, LB 101, § 9; R.S.Supp.,1973, § 85-179.12; Laws 1985, LB 132, § 8; Laws 1987, LB 473, § 21; Laws 1988, LB 352, § 117; R.S.1943, (2003), § 71-1,107.23; Laws 2007, LB463, § 709.
Operative date December 1, 2008.

38-2052 Physician assistants; misrepresentation; penalty. Any person who has not been licensed by the department, with the recommendation of the board, and who holds himself or herself out as a physician assistant, or who uses any other term to indicate or imply that he or she is a physician assistant, shall be guilty of a Class IV felony.

Source: Laws 1973, LB 101, § 7; R.S.Supp.,1973, § 85-179.10; Laws 1977, LB 39, § 319; Laws 1985, LB 132, § 7; R.S.1943, (2003), § 71-1,107.21; Laws 2007, LB463, § 710.
Operative date December 1, 2008.

38-2053 Physician assistants; negligent acts; liability. Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision and control.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711.
Operative date December 1, 2008.

38-2054 Physician assistants; licensed; not engaged in unauthorized practice of medicine. Any physician assistant who is licensed and who renders services under the supervision and control of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712.
Operative date December 1, 2008.

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 supervising physician and the physician assistant. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number. When prescribing Schedule II controlled substances, the prescription container label shall bear all information required by the federal Controlled Substances Act of 1970.

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.
Operative date December 1, 2008.

Cross Reference

Schedules of controlled substances, see section 28-405.

38-2056 Physician Assistant Committee; created; membership; powers and duties; per diem; expenses. (1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections 38-178 and 38-179, (e) physician assistant licensure and supervising physician requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714.
Operative date December 1, 2008.

38-2057 Acupuncture; exemptions. The provisions of the Medicine and Surgery Practice Act relating to acupuncture do not apply to:

(1) Any other health care practitioner credentialed under the Uniform Credentialing Act practicing within the scope of his or her profession;

(2) A student practicing acupuncture under the supervision of a person licensed to practice acupuncture under the Uniform Credentialing Act as part of a course of study approved by the department; or

(3) The practice of acupuncture by any person licensed or certified to practice acupuncture in any other jurisdiction when practicing in an educational seminar sponsored by a state-approved acupuncture or professional organization if the practice is supervised directly by a person licensed to practice acupuncture under the Uniform Credentialing Act.

Source: Laws 2001, LB 270, § 9; Laws 2003, LB 242, § 81; R.S.1943, (2003), § 71-1,345; Laws 2007, LB463, § 715.
Operative date December 1, 2008.

38-2058 Acupuncture; license required; standard of care. It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act and has been presented by the patient with a prior letter of referral from or a medical diagnosis and evaluation completed by a practitioner licensed to practice medicine and surgery or osteopathic medicine and surgery within ninety days immediately preceding the date of an initial acupuncture treatment. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to

patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery.

Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716. Operative date December 1, 2008.

38-2059 Acupuncture; consent required. The practice of acupuncture shall not be performed upon any person except with the voluntary and informed consent of such person. Information provided in connection with obtaining such informed consent shall include, but not be limited to, the following:

(1) The distinctions and differences between the practice of acupuncture and the practice of medicine;

(2) The disclosure that an acupuncturist is not licensed to practice medicine or to make a medical diagnosis of the person's disease or condition and that a physician should be consulted for such medical diagnosis;

(3) The nature and the purpose of the acupuncture treatment; and

(4) Any medical or other risks associated with such treatment.

Source: Laws 2001, LB 270, § 11; R.S.1943, (2003), § 71-1,347; Laws 2007, LB463, § 717. Operative date December 1, 2008.

38-2060 Acupuncture; license requirements. At the time of application for an initial license to practice acupuncture, the applicant shall present to the department proof that he or she:

(1) Has graduated from, after having successfully completed the acupuncture curriculum requirements of, a formal, full-time acupuncture program at a university, college, or school of acupuncture approved by the board which includes at least one thousand seven hundred twenty-five hours of entry-level acupuncture education consisting of a minimum of one thousand didactic and five hundred clinical hours;

(2) Has successfully passed an acupuncture examination approved by the board which shall include a comprehensive written examination in acupuncture theory, diagnosis and treatment technique, and point location; and

(3) Has successfully completed a clean-needle technique course approved by the board.

Source: Laws 2001, LB 270, § 12; R.S.1943, (2003), § 71-1,348; Laws 2007, LB463, § 718. Operative date December 1, 2008.

38-2061 Fees. The department shall establish and collect fees for credentialing under the Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 719. Operative date December 1, 2008.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section.

38-2101 Act, how cited. Sections 38-2101 to 38-2139 shall be known and may be cited as the Mental Health Practice Act.

Source: Laws 2007, LB247, § 72; Laws 2007, LB463, § 720.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 720, and was amended by Laws 2007, LB 247, section 72.

38-2102 Legislative findings. The Legislature finds that, because many mental health practitioners are not regulated in this state, anyone may offer mental health services by using an unrestricted title and that there is no means for identifying qualified practitioners, for enforcing professional standards, or for holding such practitioners accountable for their actions. Therefor the Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated.

The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers, master social workers, professional counselors, and marriage and family therapists.

Source: Laws 1993, LB 669, § 14; R.S.1943, (2003), § 71-1,295; Laws 2007, LB463, § 721.
Operative date December 1, 2008.

38-2103 Definitions, where found. For purposes of the Mental Health Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2104 to 38-2119 apply.

Source: Laws 1993, LB 669, § 15; R.S.1943, (2003), § 71-1,296; Laws 2007, LB247, § 38; Laws 2007, LB463, § 722.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 38, with LB 463, section 722, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2104 Approved educational program, defined. Approved educational program means a program of education and training approved by the board. Such approval may be based on the program's accreditation by an accrediting agency or on standards established by the board in the manner and form provided in section 38-133.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723.
Operative date December 1, 2008.

38-2105 Board, defined. Board means the Board of Mental Health Practice.

Source: Laws 1993, LB 669, § 17; Laws 1999, LB 828, § 148; R.S.1943, (2003), § 71-1,298; Laws 2007, LB463, § 724.
Operative date December 1, 2008.

38-2106 Certified marriage and family therapist, defined. Certified marriage and family therapist means a person who is certified to practice marriage and family therapy pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 18; R.S.1943, (2003), § 71-1,299; Laws 2007, LB463, § 725.
Operative date December 1, 2008.

38-2107 Certified master social work, defined. Certified master social work means the specialized application of social work values, knowledge, principles, and methods in all areas of social work practice. Certified master social work may include the private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 6; R.S.1943, (1990), § 71-1,249; Laws 1993, LB 669, § 19; R.S.1943, (2003), § 71-1,300; Laws 2007, LB463, § 726.
Operative date December 1, 2008.

38-2108 Certified master social worker, defined. Certified master social worker means a person who meets the standards established in subsection (1) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 8; R.S.1943, (1990), § 71-1,251; Laws 1993, LB 669, § 20; R.S.1943, (2003), § 71-1,301; Laws 2007, LB463, § 727.
Operative date December 1, 2008.

38-2109 Certified professional counselor, defined. Certified professional counselor means a person who is certified to practice professional counseling pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 1993, LB 669, § 21; R.S.1943, (2003), § 71-1,302; Laws 2007, LB463, § 728.
Operative date December 1, 2008.

38-2110 Certified social work, defined. Certified social work means the professional application of social work values, knowledge, principles, and methods in all areas of social work practice, except that certified social work shall not include private, independent, and autonomous practice of social work.

Source: Laws 1986, LB 286, § 7; R.S.1943, (1990), § 71-1,250; Laws 1993, LB 669, § 22; R.S.1943, (2003), § 71-1,303; Laws 2007, LB463, § 729.
Operative date December 1, 2008.

38-2111 Certified social worker, defined. Certified social worker means a person who meets the standards established in subsection (2) of section 38-2128 and who holds a current certificate issued by the department.

Source: Laws 1986, LB 286, § 9; R.S.1943, (1990), § 71-1,252; Laws 1993, LB 669, § 23; R.S.1943, (2003), § 71-1,304; Laws 2007, LB463, § 730.
Operative date December 1, 2008.

38-2112 Consultation, defined. Consultation means a professional collaborative relationship between a licensed mental health practitioner and a consultant who is a psychologist licensed to engage in the practice of psychology as provided in section 38-3111 or a qualified physician in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which indicates the responsibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731.
Operative date December 1, 2008.

38-2113 Independent mental health practice, defined. (1) Independent mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Independent mental health practice includes diagnosing major mental illness or disorder, using psychotherapy with individuals suspected of having major mental or emotional disorders, or using psychotherapy to treat the concomitants of organic illness, with or without consultation with a qualified physician or licensed psychologist.

(3) Independent mental health practice does not include the practice of psychology or medicine, prescribing drugs or electroconvulsive therapy, treating physical disease, injury, or deformity, or measuring personality or intelligence for the purpose of diagnosis or treatment planning.

Source: Laws 2007, LB247, § 39; R.S.Supp., 2007, § 71-1,305.01.
Operative date December 1, 2008.

38-2114 Marriage and family therapy, defined. Marriage and family therapy means the assessment and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems through the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such disorders.

Source: Laws 1993, LB 669, § 25; R.S.1943, (2003), § 71-1,306; Laws 2007, LB463, § 732. Operative date December 1, 2008.

38-2115 Mental health practice, defined; limitation on practice. (1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician or a psychologist licensed to engage in the practice of psychology as provided in section 38-3111;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician or licensed psychologist; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons certified under the Mental Health Practice Act but not licensed under section 38-2122 shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 40, with LB 463, section 733, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2116 Mental health practitioner, independent mental health practitioner, defined; use of titles. (1) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services. Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2) A person who is licensed as a mental health practitioner or an independent mental health practitioner and certified as a master social worker may use the title licensed clinical social worker. A person who is licensed as a mental health practitioner or an independent

mental health practitioner and certified as a professional counselor may use the title licensed professional counselor. A person who is licensed as a mental health practitioner or an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist. No person shall use the title licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(3) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; R.S.1943, (2003), § 71-1,308; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 41, with LB 463, section 734, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2117 Mental health program, defined. Mental health program means an educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, or family relations, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735. Operative date December 1, 2008.

38-2118 Professional counseling, defined. Professional counseling means the assessment and treatment of mental and emotional disorders within the context of professional counseling theory and practice of individuals, couples, families, or groups and includes, but is not limited to:

(1) Assisting individuals or groups through the counseling relationship to develop understanding, define goals, plan action, and change behavior with the goal of reflecting interests, abilities, aptitudes, and needs as they are related to personal and social concerns, educational progress, and occupations;

(2) Appraisal activities which shall mean selecting, administering, scoring, and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, except that nothing in this subdivision shall be construed to authorize a certified professional counselor to engage in the practice of clinical psychology as defined in section 38-3111;

(3) Referral activities which evaluate data to identify which persons or groups may better be served by other specialists;

(4) Research activities which shall mean reporting, designing, conducting, or consulting on research in counseling with human subjects;

(5) Therapeutic, vocational, or personal rehabilitation in relationship to adapting to physical, emotional, or intellectual disability; and

(6) Consulting on any activity listed in this section.

Source: Laws 1986, LB 579, § 2; Laws 1988, LB 1100, § 88; R.S.1943, (1990), § 71-1,266; Laws 1993, LB 669, § 29; Laws 1994, LB 1210, § 97; R.S.1943, (2003), § 71-1,310; Laws 2007, LB463, § 736. Operative date December 1, 2008.

38-2119 Social work practice or the practice of social work, defined. (1) Social work practice or the practice of social work means the professional activity of helping individuals, groups, and families or larger systems such as organizations and communities to improve, restore, or enhance their capacities for personal and social functioning and the professional application of social work values, knowledge, principles, and methods in the following areas of practice:

(a) Information, resource identification and development, and referral services;

(b) Preparation and evaluation of psychosocial assessments and development of social work service plans;

(c) Case management, coordination, and monitoring of social work service plans in the areas of personal, social, or economic resources, conditions, or problems;

(d) Development, implementation, and evaluation of social work programs and policies;

(e) Supportive contacts to assist individuals and groups with personal adjustment to crisis, transition, economic change, or a personal or family member's health condition, especially in the area of services given in hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, and correctional facilities. Nothing in this subdivision shall be construed to prevent charitable and religious organizations, the clergy, governmental agencies, hospitals, health clinics, home health agencies, schools, shelters for the homeless, shelters for the urgent care of victims of sexual assault, child abuse, elder abuse, or domestic violence, nursing homes, or correctional facilities from providing supportive contacts to assist individuals and groups with adjustment to crisis, transition, economic change, or personal or a family member's health condition if such persons or organizations do not represent themselves to be social workers;

(f) Social casework for and prevention of psychosocial dysfunction, disability, or impairment; and

(g) Social work research, consultation, and education.

(2) Social work practice does not include the following:

(a) The measuring and testing of personality or intelligence;

(b) Accepting fees or compensation for the treatment of disease, injury, or deformity of persons by drugs, surgery, or any manual or mechanical treatment whatsoever;

(c) Prescribing drugs or electroconvulsive therapy; and

(d) Treating organic diseases or major psychiatric diseases.

(3) A certified master social worker who practices within the confines of this section shall not be required to be licensed as a mental health practitioner.

Source: Laws 1986, LB 286, § 5; R.S.1943, (1990), § 71-1,248; Laws 1993, LB 669, § 30; Laws 1994, LB 1210, § 98; R.S.1943, (2003), § 71-1,311; Laws 2007, LB463, § 737.
Operative date December 1, 2008.

38-2120 Board; membership; qualifications. The board shall consist of eight professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage and family therapists, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

Source: Laws 2007, LB463, § 738.
Operative date December 1, 2008.

38-2121 License; required; exceptions. The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 361, with LB 463, section 739, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2122 Mental health practitioner; qualifications. A person shall be qualified to be a licensed mental health practitioner if he or she:

(1) Has received a master's or doctorate degree that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker,

certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's or doctorate degree and during the five years immediately preceding the application for licensure; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, or a certified marriage and family therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740.
Operative date December 1, 2008.

38-2123 Provisional mental health practitioner license; qualifications; application; expiration; disclosure required. (1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's or doctorate degree that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program as specified in such section;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741.
Operative date December 1, 2008.

38-2124 Independent mental health practitioner; qualifications. (1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a masters' or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council

for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a masters' or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii) Is licensed as a provisional mental health practitioner or a licensed mental health practitioner; and

(iii) Has three thousand hours of experience obtained in a period of not less than two nor more than five years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii) Is licensed as a provisional mental health practitioner or a mental health practitioner; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp., 2007, § 71-1,314.02.
Operative date December 1, 2008.

38-2125 Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 742.
Operative date December 1, 2008.

38-2126 Certified social workers and certified master social workers; legislative findings. The Legislature finds that certified social workers and certified master social workers provide a wide range of psychosocial assessment, intervention, and support services that do not constitute the clinical treatment services of licensed mental health practitioners, psychologists, or physicians. The Legislature therefor finds that it is appropriate to provide for certification of social workers and master social workers.

Source: Laws 1993, LB 669, § 36; R.S.1943, (2003), § 71-1,317; Laws 2007, LB463, § 743. Operative date December 1, 2008.

38-2127 Practice of social work; certificate required; exceptions. The requirement to be certified as a social worker pursuant to the Uniform Credentialing Act in order to represent himself or herself as a social worker shall not be construed to prevent:

(1) Qualified members of other professions, including, but not limited to, licensed physicians, registered or licensed practical nurses, attorneys, marriage and family therapists, psychologists, psychotherapists, vocational guidance counselors, school psychologists, members of the clergy, court employees, or other persons credentialed under the Uniform Credentialing Act from doing work consistent with the scope of practice of their respective professions, except that such qualified members shall not hold themselves out to the public by title as being engaged in the practice of social work; or

(2) The activities and services of a student or intern in social work practice who is pursuing a course of study in an approved educational program if the activities and services constitute a part of his or her supervised course of study or experience for certification and are performed under the supervision of a certified master social worker and the person is identified by an appropriate title as a social work student or intern. For purposes of this subdivision, supervision means that written records of services or procedures are examined and evaluative interviews are conducted relative thereto by a certified master social worker.

Source: Laws 1986, LB 286, § 13; Laws 1987, LB 473, § 31; R.S.1943, (1990), § 71-1,256; Laws 1993, LB 669, § 37; R.S.1943, (2003), § 71-1,318; Laws 2007, LB463, § 744. Operative date December 1, 2008.

38-2128 Certified master social worker; certified social worker; qualifications. (1) A person shall be qualified to be a certified master social worker if he or she:

(a) Has a doctorate or a master's degree in social work from an approved educational program;

(b) Has had a minimum of at least three thousand hours of experience, in addition to the master's or doctorate degree, in social work under the supervision as defined in section 38-2127 of a certified master social worker;

(c) Provides evidence to the department that he or she meets the requirements of subdivisions (1)(a) and (1)(b) of this section; and

(d) Completes an application and satisfactorily passes an examination approved by the board.

(2) A person shall be qualified to be a certified social worker if he or she provides evidence to the board that he or she has a baccalaureate or master's degree in social work from an approved educational program and completes an application form.

Source: Laws 1986, LB 286, § 15; Laws 1988, LB 1100, § 85; Laws 1990, LB 1080, § 1; R.S.1943, (1990), § 71-1,258; Laws 1993, LB 669, § 38; Laws 1993, LB 506, § 1; Laws 1994, LB 1210, § 101; Laws 1997, LB 752, § 161; R.S.1943, (2003), § 71-1,319; Laws 2007, LB463, § 745. Operative date December 1, 2008.

38-2129 Provisional certification as master social worker; qualifications; application; expiration. (1) A person who needs to obtain the required three thousand hours of supervised experience in social work as specified in section 38-2128 to qualify for certification as a master social worker shall obtain a provisional certification as a master social worker. To qualify for a provisional certification as a master social worker, such person shall:

(a) Have a doctorate or master's degree in social work from an approved educational program; and

(b) Apply prior to earning the three thousand hours of supervised experience.

(2) A provisional master social worker certification shall expire upon receipt of certification as a master social worker or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional certification as a master social worker shall inform all clients that he or she holds a provisional certification and is practicing social work under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 82; Laws 2003, LB 242, § 74; R.S.1943, (2003), § 71-1,319.01; Laws 2007, LB463, § 746.
Operative date December 1, 2008.

38-2130 Certified marriage and family therapist, certified professional counselor, social worker; reciprocity. The department, with the recommendation of the board, may issue a certificate based on licensure in another jurisdiction to represent oneself as a certified marriage and family therapist, a certified professional counselor, or a social worker to an individual who meets the requirements of the Mental Health Practice Act relating to marriage and family therapy, professional counseling, or social work, as appropriate, or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 747.
Operative date December 1, 2008.

38-2131 Certified social workers; certified master social workers; act, how construed. Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which either employ or contract for the services of social services workers, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1986, LB 286, § 21; R.S.1943, (1990), § 71-1,264; Laws 1993, LB 669, § 42; R.S.1943, (2003), § 71-1,323; Laws 2007, LB463, § 748.
Operative date December 1, 2008.

38-2132 Certified professional counselor; qualifications. A person shall be qualified to be a certified professional counselor if he or she:

(1) Has received a master's degree from an approved educational program;

(2) Has had three thousand hours of experience in professional counseling approved by the board after receipt of the master's degree; and

(3) Completes an application and satisfactorily passes an examination approved by the board.

Source: Laws 1986, LB 579, § 5; Laws 1988, LB 1100, § 91; R.S.1943, (1990), § 71-1,269; Laws 1993, LB 669, § 44; Laws 1994, LB 1210, § 104; Laws 1997, LB 752, § 162; R.S.1943, (2003), § 71-1,325; Laws 2007, LB463, § 749.
Operative date December 1, 2008.

38-2133 Marriage and family therapist; certification; qualifications. (1) A person who applies to the department for certification as a marriage and family therapist shall be qualified for such certification if he or she:

(a) Provides evidence to the department that he or she has a master's or doctoral degree in marriage and family therapy from a program approved by the board or a graduate degree in a field determined by the board to be related to marriage and family therapy and graduate-level course work determined by the board to be equivalent to a master's degree in marriage and family therapy;

(b) Provides evidence to the department that he or she has had at least three thousand hours of experience in marriage and family therapy under a qualified supervisor following receipt of the graduate degree; and

(c) Completes an application and passes an examination approved by the board.

(2) For purposes of this section:

(a) Actively engaged in the practice of marriage and family therapy may include (i) services and activities provided under the direct supervision of a person with at least a master's degree in marriage and family therapy from a program approved by the board or (ii) services and activities that are classified by title or by description of duties and responsibilities as marriage and family therapy practice;

(b) Qualified supervisor means a licensed mental health practitioner, a psychologist licensed to engage in the practice of psychology, or a licensed physician who meets supervisory standards established by rules and regulations of the board and the department; and

(c) Supervision means face-to-face contact between an applicant and a qualified supervisor during which the applicant apprises the supervisor of the diagnosis and treatment of each client, the clients' cases are discussed, the supervisor provides the applicant with oversight and guidance in treating and dealing with clients, and the supervisor evaluates the applicant's performance. In order for a supervised period of time to be credited toward the time of supervision required by subsection (1) of this section, it shall consist of the following:

(i) A minimum of a ratio of two hours of supervision per fifteen hours of the applicant's contact with clients;

(ii) Focus on raw data from the applicant's clinical work which is made directly available to the supervisor through such means as written clinical materials, direct observation, and video and audio recordings;

(iii) A process which is distinguishable from personal psychotherapy or didactic instruction; and

(iv) A proportion of individual and group supervision as determined by the rules and regulations of the board.

Source: Laws 1993, LB 669, § 48; Laws 1994, LB 1210, § 107; Laws 1997, LB 752, § 163; Laws 2000, LB 1135, § 15; Laws 2003, LB 242, § 78; R.S.1943, (2003), § 71-1,329; Laws 2007, LB463, § 750. Operative date December 1, 2008.

38-2134 Marriage and family therapists; act, how construed. Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which employ or contract for the services of marriage and family therapists, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2119.

Source: Laws 1993, LB 669, § 51; R.S.1943, (2003), § 71-1,332; Laws 2007, LB463, § 751. Operative date December 1, 2008.

38-2135 Fees. The department shall establish and collect fees for credentialing under the Mental Health Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 752. Operative date December 1, 2008.

38-2136 Mental health practitioners; confidentiality; exception. No person licensed or certified pursuant to the Mental Health Practice Act shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; R.S.1943, (2003), § 71-1,335; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 46, with LB 463, section 753, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2137 Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability. (1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to the Mental Health Practice Act for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 38-2136 against a licensee or certificate holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; R.S.1943, (2003), § 71-1,336; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 47, with LB 463, section 754, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2138 Code of ethics; board; duties; duty to report violations. The board shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under the Mental Health Practice Act that persons licensed or certified pursuant to the act limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Credentialing Act unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; R.S.1943, (2003), § 71-1,337; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 48, with LB 463, section 755, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2139 Additional grounds for disciplinary action. In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential subject to the Mental Health 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 licensee fails to disclose the information required by section 38-2123 or 38-2129.

Source: Laws 2007, LB463, § 756.
Operative date December 1, 2008.

ARTICLE 22

NURSE PRACTICE ACT

Section.

38-2201 Act, how cited. Sections 38-2201 to 38-2236 shall be known and may be cited as the Nurse Practice Act.

Source: Laws 1995, LB 563, § 4; Laws 2000, LB 523, § 2; R.S.1943, (2003), § 71-1,132.01; Laws 2007, LB463, § 757.
Operative date December 1, 2008.

38-2202 Definitions, where found. For purposes of the Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2203 to 38-2212 apply.

Source: Laws 2007, LB463, § 758.
Operative date December 1, 2008.

38-2203 Assigning, defined. Assigning means appointing or designating another individual the responsibility for the performance of nursing interventions.

Source: Laws 2007, LB463, § 759.
Operative date December 1, 2008.

38-2204 Board, defined. Board means the Board of Nursing.

Source: Laws 2007, LB463, § 760.
Operative date December 1, 2008.

38-2205 Delegating, defined. Delegating means transferring to another individual the authority, responsibility, and accountability to perform nursing interventions.

Source: Laws 2007, LB463, § 761.
Operative date December 1, 2008.

38-2206 Directing, defined. Directing means managing, guiding, and supervising the nursing interventions performed by another individual.

Source: Laws 2007, LB463, § 762.
Operative date December 1, 2008.

38-2207 Executive director, defined. Executive director means the executive director of the board.

Source: Laws 2007, LB463, § 763.
Operative date December 1, 2008.

38-2208 License, defined. License, for purposes of discipline, includes the multistate licensure privilege to practice granted by the Nurse Licensure Compact. If the multistate licensure privilege is restricted due to disciplinary action by the home state, the department may, upon request by the individual, grant the authority to practice in this state.

Source: Laws 2007, LB463, § 764.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2209 Licensed practitioner, defined. Licensed practitioner means a person lawfully authorized to prescribe medications or treatments.

Source: Laws 2007, LB463, § 765.
Operative date December 1, 2008.

38-2210 Practice of nursing, defined. Practice of nursing means the performance for compensation or gratuitously of any act expressing judgment or skill based upon a systematized body of nursing knowledge. Such acts include the identification of and intervention in actual or potential health problems of individuals, families, or groups, which acts are directed toward maintaining health status, preventing illness, injury, or infirmity, improving health status, and providing care supportive to or restorative of life and well-being through nursing assessment and through the execution of nursing care and of diagnostic or therapeutic regimens prescribed by any person lawfully authorized to prescribe. Each nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. Licensed nurses may use the services of unlicensed individuals to provide assistance with personal care and activities of daily living.

Source: Laws 2007, LB463, § 766.
Operative date December 1, 2008.

38-2211 Practice of nursing by a licensed practical nurse, defined. (1) Practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through

an approved program of practical nursing. A licensed practical nurse may function at the direction of a licensed practitioner or a registered nurse.

(2) Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

(a) Contributing to the assessment of the health status of individuals and groups;

(b) Participating in the development and modification of a plan of care;

(c) Implementing the appropriate aspects of the plan of care;

(d) Maintaining safe and effective nursing care rendered directly or indirectly;

(e) Participating in the evaluation of response to interventions; and

(f) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act.

Source: Laws 2007, LB463, § 767.
Operative date December 1, 2008.

38-2212 Practice of nursing by a registered nurse, defined. (1) The practice of nursing by a registered nurse means assuming responsibility and accountability for nursing actions.

(2) Nursing actions include, but are not limited to:

(a) Assessing human responses to actual or potential health conditions;

(b) Establishing nursing diagnoses;

(c) Establishing goals and outcomes to meet identified health care needs;

(d) Establishing and maintaining a plan of care;

(e) Prescribing nursing interventions to implement the plan of care;

(f) Implementing the plan of care;

(g) Teaching health care practices;

(h) Delegating, directing, or assigning nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act;

(i) Maintaining safe and effective nursing care rendered directly or indirectly;

(j) Evaluating responses to interventions, including, but not limited to, performing physical and psychological assessments of patients under restraint and seclusion as required by federal law, if the registered nurse has been trained in the use of emergency safety intervention;

(k) Teaching theory and practice of nursing;

(l) Conducting, evaluating, and utilizing nursing research;

(m) Administering, managing, and supervising the practice of nursing; and

(n) Collaborating with other health professionals in the management of health care.

Source: Laws 2007, LB463, § 768.
Operative date December 1, 2008.

38-2213 Board; members; qualifications. (1) The board shall consist of eight registered nurse members, two licensed practical nurse members, and two public members. The registered nurses on the board shall be from the following areas: (a) One practical nurse educator; (b) one associate degree or diploma nurse educator; (c) one baccalaureate nurse

educator; (d) two nursing service administrators; (e) two staff nurses; and (f) one advanced practice registered nurse.

(2) The State Board of Health shall attempt to ensure that the membership of the Board of Nursing is representative of acute care, long-term care, and community-based care. A minimum of three and a maximum of five members shall be appointed from each congressional district, and each member shall have been a bona fide resident of the congressional district from which he or she is appointed for a period of at least one year prior to the time of the appointment of such member.

Source: Laws 1953, c. 245, § 4(1), p. 838; Laws 1955, c. 272, § 3, p. 856; Laws 1959, c. 320, § 2, p. 1171; Laws 1961, c. 338, § 1, p. 1059; Laws 1961, c. 282, § 4, p. 825; Laws 1975, LB 422, § 4; Laws 1987, LB 473, § 22; Laws 1988, LB 1100, § 37; Laws 1993, LB 375, § 1; Laws 1994, LB 1223, § 15; Laws 1995, LB 563, § 11; Laws 1996, LB 414, § 4; Laws 2000, LB 1115, § 15; Laws 2002, LB 1062, § 21; Laws 2005, LB 256, § 25; R.S.Supp.,2006, § 71-1,132.07; Laws 2007, LB463, § 769. Operative date December 1, 2008.

Cross Reference

For limits and designations of congressional districts, see section 32-504.

38-2214 Board members; additional qualifications. (1) Each licensed practical nurse educator on the board shall (a) be a registered nurse currently licensed in the state, (b) have graduated with a graduate degree in nursing or a related field of study, (c) have had a minimum of five years' experience in administration, teaching, or consultation in practical nurse education, and (d) be currently employed as a practical nurse educator.

(2) Each associate degree or diploma nurse educator on the board and the baccalaureate nurse educator on the board shall (a) be a registered nurse currently licensed in the state, (b) have graduated with a graduate degree in nursing, (c) have had a minimum of five years' experience in administration, teaching, or consultation in nursing education, and (d) be currently employed in the field being represented.

(3) Each staff nurse on the board shall (a) be a registered nurse currently licensed in the state, (b) have had a minimum of five years' experience in nursing, and (c) be currently employed as a staff nurse in the provision of patient care services.

(4) Each nursing service administrator on the board shall (a) be a registered nurse currently licensed in the state, (b) have had a minimum of five years' experience in nursing service administration, and (c) be currently employed in such field.

(5) Each licensed practical nurse member shall (a) have completed at least four years of high school study, (b) be licensed as a licensed practical nurse in this state, (c) have obtained a certificate or diploma from a state-approved practical nursing program, (d) have been actively engaged in practical nursing for at least five years, and (e) be currently employed in the provision of patient care services as a licensed practical nurse in the state.

(6) Each public member shall meet the requirements of section 38-165.

(7) The advanced practice registered nurse on the board shall (a) have a minimum of five years' experience as an advanced practice registered nurse, (b) be currently employed as an

advanced practice registered nurse, and (c) be licensed as an advanced practice registered nurse.

(8) Members serving on December 1, 2008, may complete their respective terms even if they do not meet the requirements for appointment as changed by Laws 2007, LB 463.

Source: Laws 1953, c. 245, § 4(2), p. 838; Laws 1955, c. 272, § 4, p. 857; Laws 1975, LB 422, § 5; Laws 1988, LB 1100, § 38; Laws 1994, LB 1223, § 16; Laws 1995, LB 563, § 12; Laws 1996, LB 414, § 5; Laws 2000, LB 1115, § 16; Laws 2005, LB 256, § 26; R.S.Supp.,2006, § 71-1,132.08; Laws 2007, LB463, § 770.
Operative date December 1, 2008.

38-2215 Executive director; qualifications; practice consultant, education consultant, and nurse investigators; department; appoint. (1) The department shall appoint an executive director who is a registered nurse currently licensed in this state and who has a graduate degree in nursing. The executive director shall have a minimum of five years' experience within the last ten years in the areas of administration, teaching, or consultation in the field of nursing. The salary of the executive director shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education and experience. The executive director shall not be a member of the board. The executive director shall be administrator of the Nurse Licensure Compact. As administrator, the executive director shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article X of the compact. The executive director serving on December 1, 2008, may continue serving until replaced by the department pursuant to this section.

(2) The department shall appoint a practice consultant and an education consultant, each of whom is a registered nurse currently licensed in this state and has a minimum of five years' experience. On and after January 1, 1995, any person newly appointed to these positions shall also have a graduate degree in nursing. The salaries for these positions shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education. The nursing education consultant and nursing practice consultant shall not be members of the board.

(3) The department shall appoint one or more nurse investigators to conduct investigations of violations of the Nurse Practice Act. Each nurse investigator shall be a registered nurse currently licensed in this state and have a minimum of five years' experience in nursing practice. The nurse investigators shall not be members of the board.

Source: Laws 1995, LB 563, § 10; Laws 2000, LB 523, § 8; R.S.1943, (2003), § 71-1,132.31; Laws 2007, LB463, § 771.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2216 Board; rules and regulations; powers and duties; enumerated. In addition to the duties listed in sections 38-126 and 38-161, the board shall:

(1) Adopt reasonable and uniform standards for nursing practice and nursing education;

(2) If requested, issue or decline to issue advisory opinions defining acts which in the opinion of the board are or are not permitted in the practice of nursing. Such opinions shall be considered informational only and are nonbinding. Practice-related information provided by the board to registered nurses or licensed practical nurses licensed under the Nurse Practice Act shall be made available by the board on request to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact;

(3) Establish rules and regulations for approving and classifying programs preparing nurses, taking into consideration administrative and organizational patterns, the curriculum, students, student services, faculty, and instructional resources and facilities, and provide surveys for each educational program as determined by the board;

(4) Approve educational programs which meet the requirements of the Nurse Practice Act;

(5) Keep a record of all its proceedings and compile an annual report for distribution;

(6) Adopt rules and regulations establishing standards for delegation of nursing activities, including training or experience requirements, competency determination, and nursing supervision;

(7) Collect data regarding nursing;

(8) Provide consultation and conduct conferences, forums, studies, and research on nursing practice and education;

(9) Join organizations that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety, and welfare;

(10) Administer the Licensed Practical Nurse-Certified Practice Act; and

(11) Administer the Nurse Licensure Compact. In reporting information to the coordinated licensure information system under Article VII of the compact, the department may disclose personal identifying information about a nurse, including his or her social security number.

Source: Laws 1953, c. 245, § 5, p. 839; Laws 1959, c. 310, § 3, p. 1172; Laws 1965, c. 414, § 1, p. 1322; Laws 1975, LB 422, § 6; Laws 1976, LB 692, § 1; Laws 1978, LB 653, § 24; Laws 1978, LB 658, § 1; Laws 1980, LB 847, § 3; Laws 1981, LB 379, § 36; Laws 1991, LB 703, § 19; Laws 1995, LB 563, § 15; Laws 1996, LB 414, § 6; Laws 1999, LB 594, § 36; Laws 2000, LB 523, § 6; Laws 2000, LB 1115, § 17; Laws 2002, LB 1021, § 19; Laws 2002, LB 1062, § 22; Laws 2005, LB 256, § 27; R.S.Supp.,2006, § 71-1,132.11; Laws 2007, LB463, § 772.
Operative date December 1, 2008.

Cross Reference

Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Nurse Licensure Compact, see section 71-1795.

38-2217 Nursing; license; required. In the interest of health and morals and the safeguarding of life, any person practicing or offering to practice nursing in this state for compensation or gratuitously, except as provided in section 38-2218, shall submit satisfactory evidence as provided in the Nurse Practice Act that he or she is qualified to so practice and is licensed as provided by the act. Except as provided in section 38-2218, the practice

or attempted practice of nursing, the holding out or attempted holding out of oneself as a registered nurse or a licensed practical nurse, or the use of any title, abbreviation, card, or device to indicate that such a person is practicing nursing is unlawful unless such person has been duly licensed and registered according to the provisions of the act. The practice of nursing by any such unlicensed person or by a nurse whose license has been suspended, revoked, or expired or is on inactive status is declared to be a danger to the public health and welfare.

Source: Laws 1953, c. 245, § 1, p. 835; Laws 1975, LB 422, § 1; Laws 1995, LB 563, § 5; Laws 2002, LB 1062, § 19; R.S.1943, (2003), § 71-1,132.04; Laws 2007, LB463, § 773.
Operative date December 1, 2008.

38-2218 Nursing; practices permitted. The Nurse Practice Act confers no authority to practice medicine or surgery. The act does not prohibit:

(1) Home care provided by parents, foster parents, family, or friends so long as any such person does not represent or hold himself or herself out to be a nurse or use any designation in connection with his or her name which tends to imply that he or she is licensed to practice under the act;

(2) Christian Science nursing consistent with the theology of Christian Science provided by a Christian Science nurse who does not hold himself or herself out as a registered nurse or a licensed practical nurse;

(3) Auxiliary patient care services provided by persons carrying out duties under the direction of a licensed practitioner;

(4) Auxiliary patient care services provided by persons carrying out interventions for the support of nursing service as delegated by a registered nurse or as assigned and directed by a licensed practical nurse licensed under the act;

(5) The gratuitous rendering of assistance by anyone in the case of an emergency;

(6) Nursing by any legally licensed nurse of any other state whose engagement requires him or her to (a) accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, (b) transport patients into, out of, or through this state provided each transport does not exceed twenty-four hours, (c) provide patient care during periods of transition following transport, (d) provide educational programs or consultative services within this state for a period not to exceed fourteen consecutive days if neither the education nor the consultation includes the provision or the direction of patient care, and (e) provide nursing care in the case of a disaster. These exceptions do not permit a person to represent or hold himself or herself out as a nurse licensed to practice in this state;

(7) Nursing services rendered by a student enrolled in an approved program of nursing when the services are a part of the student's course of study;

(8) The practice of nursing by any legally licensed nurse of another state who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if the practice is limited to that service or employment; or

(9) The practice of nursing, if permitted by federal law, as a citizen of a foreign country temporarily residing in Nebraska for a period not to exceed one year for the purpose of postgraduate study, certified to be such by an appropriate agency satisfactory to the board.

Source: Laws 1953, c. 245, § 3, p. 836; Laws 1955, c. 272, § 2, p. 854; Laws 1975, LB 422, § 3; Laws 1989, LB 342, § 20; Laws 1991, LB 703, § 18; Laws 1995, LB 563, § 8; Laws 1996, LB 1155, § 24; Laws 2002, LB 1062, § 20; R.S.1943, (2003), § 71-1,132.06; Laws 2007, LB463, § 774.
Operative date December 1, 2008.

38-2219 Health maintenance activities; authorized. (1) The Nurse Practice Act does not prohibit performance of health maintenance activities by a designated care aide for a competent adult at the direction of such adult or at the direction of a caretaker for a minor child or incompetent adult.

(2) Health maintenance activities are those activities which enable the minor child or adult to live in his or her home and community. Such activities are those specialized procedures, beyond activities of daily living, which the minor child or adult is unable to perform for himself or herself and which the attending physician or registered nurse determines can be safely performed in the home and community by a designated care aide as directed by a competent adult or caretaker.

(3) A competent adult is someone who has the capability and capacity to make an informed decision.

(4) For purposes of this section, caretaker means a person who (a) is directly and personally involved in providing care for a minor child or incompetent adult and (b) is the parent, foster parent, family member, friend, or legal guardian of such minor child or incompetent adult.

Source: Laws 1995, LB 563, § 9; Laws 1997, LB 66, § 1; Laws 1999, LB 594, § 41; R.S.1943, (2003), § 71-1,132.30; Laws 2007, LB463, § 775.
Operative date December 1, 2008.

38-2220 Nursing; license; application; requirements. An applicant for a license to practice as a registered nurse shall submit satisfactory proof that the applicant has completed four years of high school study or its equivalent as determined by the board and has completed the basic professional curriculum in and holds a diploma from an accredited program of registered nursing approved by the board. There is no minimum age requirement for licensure as a registered nurse. Graduates of foreign nursing programs shall pass the Canadian Nurses Association examination or hold a certificate from the Commission on Graduates of Foreign Nursing Schools.

Source: Laws 1953, c. 245, § 7, p. 841; Laws 1965, c. 414, § 2, p. 1323; Laws 1974, LB 811, § 12; Laws 1975, LB 422, § 8; Laws 1980, LB 847, § 4; Laws 1989, LB 344, § 6; Laws 1995, LB 563, § 17; Laws 1997, LB 752, § 157; Laws 1999, LB 594, § 37; Laws 2002, LB 1062, § 23; Laws 2003, LB 242, § 44; R.S.1943, (2003), § 71-1,132.13; Laws 2007, LB463, § 776.
Operative date December 1, 2008.

38-2221 Practical nursing; license; requirements. An applicant for a license to practice as a licensed practical nurse shall submit satisfactory proof that the applicant has

completed four years of high school study or its equivalent as determined by the board and has completed the basic curriculum in and holds a diploma from an approved program of nursing. There is no minimum age requirement for licensure as a licensed practical nurse.

Source: Laws 1955, c. 272, § 8, p. 859; Laws 1974, LB 811, § 13; Laws 1975, LB 422, § 17; Laws 1980, LB 847, § 19; Laws 1989, LB 344, § 7; Laws 1995, LB 563, § 32; Laws 1997, LB 752, § 158; Laws 1999, LB 594, § 42; Laws 2003, LB 242, § 47; R.S.1943, (2003), § 71-1,132.37; Laws 2007, LB463, § 777.
Operative date December 1, 2008.

38-2222 Nursing; license; examination. An applicant for a license as a registered nurse or as a licensed practical nurse shall pass an examination as prescribed by the board in rules and regulations.

Source: Laws 1953, c. 245, § 8(1), p. 841; Laws 1975, LB 422, § 9; Laws 1980, LB 847, § 5; Laws 1983, LB 472, § 2; Laws 1987, LB 473, § 23; Laws 1994, LB 1210, § 57; Laws 1995, LB 563, § 18; R.S.1943, (2003), § 71-1,132.14; Laws 2007, LB463, § 778.
Operative date December 1, 2008.

38-2223 Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements. An applicant for a license as a registered nurse or a licensed practical nurse based on licensure in another jurisdiction shall meet the continuing competency requirements as specified in rules and regulations adopted and promulgated by the board in addition to the standards set by the board pursuant to section 38-126.

Source: Laws 1953, c. 245, § 8(2), p. 841; Laws 1975, LB 422, § 10; Laws 1980, LB 847, § 6; Laws 1995, LB 563, § 19; R.S.1943, (2003), § 71-1,132.15; Laws 2007, LB463, § 779.
Operative date December 1, 2008.

38-2224 Nursing license; reciprocity; compact requirements. Before recognizing a home state license to practice nursing issued by a state which is a party to the Nurse Licensure Compact, the board shall determine that such state's qualifications for a nursing license are substantially equivalent to or more stringent than the minimum qualifications for issuance of a Nebraska license under the Nurse Practice Act.

Source: Laws 2000, LB 523, § 4; R.S.1943, (2003), § 71-1,132.19; Laws 2007, LB463, § 780.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2225 Nursing; temporary license; issuance; conditions; how long valid; extension. (1) A temporary license to practice nursing may be issued to:

(a) An individual seeking to obtain licensure or reinstatement of his or her license as a registered nurse or licensed practical nurse when he or she has not practiced nursing in the last five years. A temporary license issued under this subdivision is valid only for the duration of the review course of study and only for nursing practice required for the review course of study;

(b) Graduates of approved programs of nursing who have passed the licensure examination, pending the completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision is valid for a period not to exceed sixty days; or

(c) Nurses currently licensed in another state as either a registered nurse or a licensed practical nurse who have graduated from an educational program approved by the board, pending completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision shall be valid for a period not to exceed sixty days.

(2) A temporary license issued pursuant to this section may be extended by the department, with the recommendation of the board.

(3) An individual holding a temporary permit to practice nursing on December 1, 2008, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms or after any period of extension under subsection (2) of this section.

Source: Laws 1953, c. 245, § 8(3), p. 841; Laws 1975, LB 422, § 11; Laws 1980, LB 847, § 7; Laws 1994, LB 1210, § 58; Laws 1995, LB 563, § 20; Laws 2002, LB 1062, § 24; R.S.1943, (2003), § 71-1,132.16; Laws 2007, LB463, § 781.
Operative date December 1, 2008.

38-2226 License on inactive status; reinstatement. Any licensed practical nurse or registered nurse whose license has been placed on inactive status due to a change in primary state of residence under the Nurse Licensure Compact may apply to reinstate his or her license upon (1) change in primary state of residence back to Nebraska or to another noncompact state, (2) meeting the continuing competency requirements, and (3) paying the renewal fee.

Source: Laws 2007, LB463, § 782.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2227 Fees. The department shall establish and collect fees for credentialing under the Nurse Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 783.
Operative date December 1, 2008.

38-2228 Nursing; use of title; restriction. (1) In the interest of public safety and consumer awareness, it is unlawful for any person to use the title nurse in reference to himself or herself in any capacity, except individuals who are or have been licensed as a registered nurse or a licensed practical nurse. A Christian Science nurse may refer to himself or herself only as a Christian Science nurse.

(2) The terms "nurse", "registered nurse", and "licensed practical nurse" include persons licensed as registered nurses or licensed practical nurses by a state that is a party to the Nurse Licensure Compact. Unless the context otherwise indicates or unless doing so would be inconsistent with the compact, nurses practicing in this state under a license issued by a state that is a party to the compact have the same rights and obligations as imposed by the laws of this state on licensees licensed under the Nurse Practice Act. The department has the authority to determine whether a right or obligation imposed on licensees applies to nurses practicing in this state under a license issued by a state that is a party to the compact, unless that determination is inconsistent with the compact.

Source: Laws 1995, LB 563, § 6; Laws 1996, LB 1155, § 25; Laws 2000, LB 523, § 7; R.S.1943, (2003), § 71-1,132.17; Laws 2007, LB463, § 784.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2229 Nursing; license; title or abbreviation; use. Any person who holds a license to practice as a registered nurse in this state has the right to use the title Registered Nurse and the abbreviation R.N. No other person shall assume or use such title or abbreviation or any words, letters, signs, or devices to indicate that the person using the same is authorized to practice registered nursing.

Source: Laws 1953, c. 245, § 10, p. 842; Laws 1992, LB 1019, § 43; Laws 1995, LB 563, § 21; Laws 2002, LB 1062, § 25; Laws 2005, LB 256, § 28; R.S.Supp.,2006, § 71-1,132.18; Laws 2007, LB463, § 785.
Operative date December 1, 2008.

38-2230 Practical nursing; license; title or abbreviation; use. Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title Licensed Practical Nurse and the abbreviation L.P.N. No other person shall assume or use such title or abbreviation or any words, letters, signs, or devices to indicate that the person using the same is authorized to practice practical nursing in this state.

Source: Laws 1955, c. 272, § 12, p. 860; Laws 1995, LB 563, § 33; R.S.1943, (2003), § 71-1,132.41; Laws 2007, LB463, § 786.
Operative date December 1, 2008.

38-2231 Disciplinary actions; limitations imposed by compact. (1) In order to effectuate the transition into compact administration, the board shall require all licensees entering into or becoming subject to an order of probation or other disciplinary action that limits practice or requires monitoring to agree, as of the date of the order, not to practice in any other state which is a party to the Nurse Licensure Compact during the term of such probation or disciplinary action without prior authorization from the other party state.

(2) Any licensee subject to disciplinary action, such as revocation, suspension, probation, or any other action which affects a licensee's authorization to practice, on the effective date of entering the compact, is not entitled to a multistate license privilege while such disciplinary

action is in effect unless practice in another state is authorized by this state and any other state in which the licensee wishes to practice.

Source: Laws 2000, LB 523, § 3; R.S.1943, (2003), § 71-1,132.38; Laws 2007, LB463, § 787.
Operative date December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

38-2232 Nursing program; application. An institution desiring to conduct a program of nursing shall apply to the board and submit evidence to the board that it is prepared to carry out the prescribed basic nursing curriculum and to meet the other standards established by the Nurse Practice Act and by the board.

Source: Laws 1953, c. 245, § 15(1), p. 843; Laws 1955, c. 272, § 6, p. 858; Laws 1980, LB 847, § 10; Laws 1995, LB 563, § 24; Laws 2002, LB 1062, § 27; R.S.1943, (2003), § 71-1,132.24; Laws 2007, LB463, § 788.
Operative date December 1, 2008.

38-2233 Nursing program; application; form. An application to conduct a program of nursing shall be made in writing upon a form to be approved and furnished by the board.

Source: Laws 1953, c. 245, § 15(2), p. 843; Laws 1955, c. 272, § 7, p. 858; Laws 1995, LB 563, § 25; Laws 2002, LB 1062, § 28; R.S.1943, (2003), § 71-1,132.25; Laws 2007, LB463, § 789.
Operative date December 1, 2008.

38-2234 Nursing program; survey; report; approval. A survey of the program institution shall be made by the executive director or other representative appointed by the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the program meets the requirements for approval, the board shall approve the program.

Source: Laws 1953, c. 245, § 15(3), p. 843; Laws 1995, LB 563, § 26; R.S.1943, (2003), § 71-1,132.26; Laws 2007, LB463, § 790.
Operative date December 1, 2008.

38-2235 Nursing programs; survey; report. The board shall, through the executive director or other representative appointed by the board, survey all programs of nursing in the state at time intervals to be determined by the board through rules and regulations. Written reports of such surveys shall be submitted to the board. The board shall act on the report to grant or deny continuing approval of the program.

Source: Laws 1953, c. 245, § 15(4), p. 844; Laws 1975, LB 422, § 13; Laws 1995, LB 563, § 27; Laws 1999, LB 594, § 40; R.S.1943, (2003), § 71-1,132.27; Laws 2007, LB463, § 791.
Operative date December 1, 2008.

38-2236 Nursing programs; failure to maintain standards; notice; discontinue; hearing. If the board determines that any approved program of nursing is not maintaining the standards required by the statutes, rules, and regulations, notice in writing, specifying the defect or defects, shall be immediately given to the program. A program which fails to correct

these conditions to the satisfaction of the board within a reasonable time shall be discontinued after hearing.

Source: Laws 1953, c. 245, § 15(5), p. 844; Laws 1980, LB 847, § 11; Laws 1995, LB 563, § 28; R.S.1943, (2003), § 71-1,132.28; Laws 2007, LB463, § 792.
Operative date December 1, 2008.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

Section.

38-2301 Act, how cited. Sections 38-2301 to 38-2323 shall be known and may be cited as the Nurse Practitioner Practice Act.

Source: Laws 1981, LB 379, § 1; Laws 1984, LB 724, § 2; Laws 1996, LB 414, § 11; Laws 2000, LB 1115, § 26; Laws 2005, LB 256, § 47; R.S.Supp.,2006, § 71-1704; Laws 2007, LB463, § 793.
Operative date December 1, 2008.

38-2302 Definitions, where found. For purposes of the Nurse Practitioner Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2303 to 38-2314 apply.

Source: Laws 1981, LB 379, § 3; Laws 1984, LB 724, § 3; Laws 1992, LB 1019, § 70; Laws 1996, LB 414, § 13; Laws 2000, LB 1115, § 28; Laws 2005, LB 256, § 48; R.S.Supp.,2006, § 71-1706; Laws 2007, LB463, § 794.
Operative date December 1, 2008.

38-2303 Approved certification program, defined. Approved certification program means a certification process for nurse practitioners utilized by an approved certifying body that (1) requires evidence of completion of a formal program of study in the nurse practitioner clinical specialty, (2) requires successful completion of a nationally recognized certification examination developed by the approved certifying body, (3) provides an ongoing recertification program, and (4) is approved by the board.

Source: Laws 1984, LB 724, § 7; Laws 1996, LB 414, § 20; Laws 2000, LB 1115, § 38; Laws 2005, LB 256, § 53; R.S.Supp.,2006, § 71-1716.02; Laws 2007, LB463, § 795.
Operative date December 1, 2008.

38-2304 Approved certifying body, defined. Approved certifying body means a national certification organization which certifies qualified licensed nurses for advanced practice in a clinical specialty area and which (1) requires eligibility criteria related to education and practice, (2) offers an examination in an advanced nursing area which meets current psychometric guidelines and tests, and (3) is approved by the board.

Source: Laws 1984, LB 724, § 6; Laws 1996, LB 414, § 19; Laws 2000, LB 1115, § 37; R.S.1943, (2003), § 71-1716.01; Laws 2007, LB463, § 796.
Operative date December 1, 2008.

38-2305 Approved nurse practitioner program, defined. Approved nurse practitioner program means a program which:

(1) Is a minimum of one full-time academic year or nine months in length and includes both a didactic component and a preceptorship of five hundred contact hours;

(2) Includes, but is not limited to, instruction in biological, behavioral, and health sciences relevant to practice as a nurse practitioner in a specific clinical area; and

(3) For the specialties of women's health and neonatal, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 1, 2007, and for all other specialties, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 19, 1996.

Source: Laws 1981, LB 379, § 14; Laws 1984, LB 724, § 12; Laws 1993, LB 536, § 67; Laws 1996, LB 414, § 22; Laws 2000, LB 1115, § 41; Laws 2005, LB 256, § 56; R.S.Supp.,2006, § 71-1717; Laws 2007, LB463, § 797.
Operative date December 1, 2008.

38-2306 Board, defined. Board means the Board of Advanced Practice Registered Nurses.

Source: Laws 1981, LB 379, § 5; Laws 1996, LB 414, § 15; Laws 2000, LB 1115, § 30; R.S.1943, (2003), § 71-1708; Laws 2007, LB463, § 798.
Operative date December 1, 2008.

38-2307 Boards, defined. Boards means the Board of Advanced Practice Registered Nurses and the Board of Nursing of the State of Nebraska.

Source: Laws 1984, LB 724, § 4; Laws 1996, LB 414, § 16; Laws 2000, LB 1115, § 31; R.S.1943, (2003), § 71-1709.01; Laws 2007, LB463, § 799.
Operative date December 1, 2008.

38-2308 Collaboration, defined. Collaboration means a process and relationship in which a nurse practitioner, together with other health professionals, delivers health care within the scope of authority of the various clinical specialty practices.

Source: Laws 1981, LB 379, § 13; Laws 1984, LB 724, § 11; Laws 1996, LB 414, § 18; Laws 2000, LB 1115, § 36; Laws 2005, LB 256, § 52; R.S.Supp.,2006, § 71-1716; Laws 2007, LB463, § 800.
Operative date December 1, 2008.

38-2309 Consultation, defined. Consultation means a process whereby a nurse practitioner seeks the advice or opinion of a physician or another health care practitioner.

Source: Laws 1996, LB 414, § 23; Laws 2000, LB 1115, § 32; Laws 2005, LB 256, § 50; R.S.Supp.,2006, § 71-1709.02; Laws 2007, LB463, § 801.
Operative date December 1, 2008.

38-2310 Integrated practice agreement, defined. (1) Integrated practice agreement means a written agreement between a nurse practitioner and a collaborating physician in which the nurse practitioner and the collaborating physician provide for the delivery of health care through an integrated practice. The integrated practice agreement shall provide that the nurse practitioner and the collaborating physician will practice collaboratively within the framework of their respective scopes of practice. Each provider shall be responsible for his or her individual decisions in managing the health care of patients. Integrated practice includes consultation, collaboration, and referral.

(2) The nurse practitioner and the collaborating physician shall have joint responsibility for patient care, based upon the scope of practice of each practitioner. The collaborating physician shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(3) For purposes of this section:

(a) Collaborating physician means a physician or osteopathic physician licensed in Nebraska and practicing in the same geographic area and practice specialty, related specialty, or field of practice as the nurse practitioner; and

(b) Supervision means the ready availability of the collaborating physician for consultation and direction of the activities of the nurse practitioner within the nurse practitioner's defined scope of practice.

Source: Laws 1984, LB 724, § 9; Laws 1996, LB 414, § 21; Laws 2000, LB 1115, § 39; Laws 2005, LB 256, § 54; R.S.Supp.,2006, § 71-1716.03; Laws 2007, LB463, § 802.
Operative date December 1, 2008.

38-2311 Licensed practitioner, defined. Licensed practitioner means any podiatrist, dentist, physician, or osteopathic physician licensed to prescribe, diagnose, and treat as provided in the Uniform Credentialing Act.

Source: Laws 1981, LB 379, § 9; Laws 2000, LB 1115, § 34; R.S.1943, (2003), § 71-1712; Laws 2007, LB463, § 803.
Operative date December 1, 2008.

38-2312 Nurse practitioner, defined. Nurse practitioner means a registered nurse certified as described in section 38-2317 and licensed under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner.

Source: Laws 1981, LB 379, § 4; Laws 1984, LB 724, § 5; Laws 1996, LB 414, § 14; Laws 2000, LB 1115, § 29; Laws 2005, LB 256, § 49; R.S.Supp.,2006, § 71-1707; Laws 2007, LB185, § 5; Laws 2007, LB463, § 804.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.

38-2313 Preceptorship, defined. Preceptorship means the clinical practice component of an educational program for the preparation of nurse practitioners.

Source: Laws 1981, LB 379, § 11; Laws 1996, LB 414, § 17; Laws 2000, LB 1115, § 35; Laws 2005, LB 256, § 51; R.S.Supp.,2006, § 71-1714; Laws 2007, LB463, § 805.
Operative date December 1, 2008.

38-2314 Referral, defined. Referral means a process whereby a nurse practitioner directs the patient to a physician or other health care practitioner for management of a particular problem or aspect of the patient's care.

Source: Laws 1996, LB 414, § 24; Laws 2000, LB 1115, § 40; Laws 2005, LB 256, § 55; R.S.Supp.,2006, § 71-1716.05; Laws 2007, LB463, § 806.
Operative date December 1, 2008.

38-2315 Nurse practitioner; functions; scope. (1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice. Any limitation on the prescribing authority of the nurse practitioner for controlled substances listed in Schedule II of section 28-405 shall be recorded in the integrated practice agreement established pursuant to section 38-2310.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807.
Operative date December 1, 2008.

Cross Reference

Nebraska Mental Health Commitment Act, see section 71-901.

38-2316 Unlicensed person; acts permitted. The Nurse Practitioner Practice Act does not prohibit the performance of activities of a nurse practitioner by an unlicensed person if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state;

(3) By a person enrolled in an approved nurse practitioner program for the preparation of nurse practitioners as part of that approved program; and

(4) By a person holding a temporary license pursuant to section 38-2318.

Source: Laws 1984, LB 724, § 25; Laws 1996, LB 414, § 40; Laws 2000, LB 1115, § 58; Laws 2005, LB 256, § 71; R.S.Supp.,2006, § 71-1726.01; Laws 2007, LB185, § 12; Laws 2007, LB463, § 808.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2317 Nurse practitioner; licensure; requirements. (1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner shall have:

(a) A license as a registered nurse in the State of Nebraska or the authority based upon the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Evidence of having successfully completed a graduate-level program in the clinical specialty area of nurse practitioner practice, which program is accredited by a national accrediting body;

(c) Evidence of having successfully completed thirty contact hours of education in pharmacotherapeutics; and

(d) Proof of having passed an examination pertaining to the specific nurse practitioner role in nursing adopted or approved by the board with the approval of the department. Such examination may include any recognized national credentialing examination for nurse practitioners conducted by an approved certifying body which administers an approved certification program.

(2) If more than five years have elapsed since the completion of the nurse practitioner program or since the applicant has practiced in the specific nurse practitioner role, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency as required by the board.

Source: Laws 1981, LB 379, § 19; Laws 1984, LB 724, § 20; Laws 1986, LB 926, § 55; Laws 1993, LB 536, § 70; Laws 1996, LB 414, § 30; Laws 1997, LB 752, § 173; Laws 2000, LB 1115, § 46; Laws 2002, LB 1021, § 57; Laws 2003, LB 242, § 101; Laws 2005, LB 256, § 59; R.S.Supp.,2006, § 71-1722; Laws 2007, LB185, § 6; Laws 2007, LB463, § 809.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Nurse Licensure Compact, see section 71-1795.

38-2318 Nurse practitioner; temporary license; requirements. The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

(1) To graduates of an approved nurse practitioner program pending results of the first credentialing examination following graduation;

(2) To a nurse practitioner lawfully authorized to practice in another state pending completion of the application for a Nebraska license; and

(3) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board.

A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board. An individual holding a temporary permit as a nurse practitioner on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1984, LB 724, § 22; Laws 1993, LB 536, § 72; Laws 1996, LB 414, § 37; Laws 2000, LB 1115, § 53; Laws 2002, LB 1021, § 59; Laws 2005, LB 256, § 66; R.S.Supp.,2006, § 71-1724.01; Laws 2007, LB185, § 11; Laws 2007, LB463, § 810.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2319 Nurse practitioner; license; renewal; requirements. To renew a license to practice as a nurse practitioner, the applicant shall have:

(1) Documentation of a minimum of two thousand eighty hours of practice as a nurse practitioner within the five years immediately preceding renewal. These practice hours shall fulfill the requirements of the practice hours required for registered nurse renewal. Practice hours as an advanced practice registered nurse prior to July 1, 2007, shall be used to fulfill the requirements of this section; and

(2) Proof of current certification in the specific nurse practitioner clinical specialty area by an approved certification program.

Source: Laws 1981, LB 379, § 21; Laws 1983, LB 472, § 6; Laws 1984, LB 724, § 21; Laws 1986, LB 926, § 56; Laws 1988, LB 1100, § 105; Laws 1993, LB 536, § 71; Laws 1996, LB 414, § 36; Laws 2000, LB 1115, § 52; Laws 2002, LB 1021, § 58; Laws 2003, LB 242, § 103; Laws 2005, LB 256, § 65; R.S.Supp.,2006, § 71-1724; Laws 2007, LB185, § 10; Laws 2007, LB463, § 811.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2320 Nurse practitioner; liability insurance; when required. (1) Nurse practitioners shall maintain in effect professional liability insurance with such coverage and limits as may be established by the board.

(2) If a nurse practitioner renders services in a hospital or other health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but need not be limited to, reasonable requirements that the nurse practitioner and all collaborating licensed practitioners maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Source: Laws 1996, LB 414, § 35; Laws 2000, LB 1115, § 51; Laws 2005, LB 256, § 64; R.S.Supp.,2006, § 71-1723.04; Laws 2007, LB463, § 812.
Operative date December 1, 2008.

38-2321 Nurse practitioner; right to use title or abbreviation. A person licensed to practice as a nurse practitioner in this state may use the title nurse practitioner and the abbreviation NP.

Source: Laws 1984, LB 724, § 27; Laws 1996, LB 414, § 32; Laws 2000, LB 1115, § 48; Laws 2005, LB 256, § 61; R.S.Supp.,2006, § 71-1723.01; Laws 2007, LB185, § 8; Laws 2007, LB463, § 813.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2322 Nurse practitioner; commencement of practice; requirements; waiver. (1) Prior to commencing practice as a nurse practitioner, an individual (a) who has a master's degree or doctorate degree in nursing and has completed an approved nurse practitioner program, (b) who can demonstrate separate course work in pharmacotherapeutics, advanced health assessment, and pathophysiology or psychopathology, and (c) who has completed a minimum of two thousand hours of practice under the supervision of a physician,

shall submit to the department an integrated practice agreement with a collaborating physician and shall furnish proof of professional liability insurance required under section 38-2320.

(2) A nurse practitioner who needs to obtain the two thousand hours of supervised practice required under subdivision (1)(c) of this section shall (a) submit to the department one or more integrated practice agreements with a collaborating physician, (b) furnish proof of jointly approved protocols with a collaborating physician which shall guide the nurse practitioner's practice, and (c) furnish proof of professional liability insurance required under section 38-2320.

(3) If, after a diligent effort to obtain an integrated practice agreement, a nurse practitioner is unable to obtain an integrated practice agreement with one physician, the board may waive the requirement of an integrated practice agreement upon a showing that the applicant (a) meets the requirements of subsection (1) of this section, (b) has made a diligent effort to obtain an integrated practice agreement, and (c) will practice in a geographic area where there is a shortage of health care services.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; R.S.Supp.,2006, § 71-1723.02; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814.

Note: The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2323 Nurse practitioner; actions not prohibited. Nothing in the Nurse Practitioner Practice Act shall prohibit a nurse practitioner from consulting or collaborating with and referring patients to health care providers not included in the nurse practitioner's integrated practice agreement.

Source: Laws 1996, LB 414, § 34; Laws 2000, LB 1115, § 50; Laws 2005, LB 256, § 63; R.S.Supp.,2006, § 71-1723.03; Laws 2007, LB463, § 815.
Operative date December 1, 2008.

ARTICLE 24

NURSING HOME ADMINISTRATOR PRACTICE ACT

Section.

38-2401 Act, how cited. Sections 38-2401 to 38-2425 shall be known and may be cited as the Nursing Home Administrator Practice Act.

Source: Laws 2007, LB463, § 816.
Operative date December 1, 2008.

38-2402 Definitions, where found. For purposes of the Nursing Home Administrator Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2403 to 38-2416 apply.

Source: Laws 2007, LB463, § 817.
Operative date December 1, 2008.

38-2403 Accredited institution, defined. Accredited institution means a postsecondary educational institution approved by the board.

Source: Laws 2007, LB463, § 818.
Operative date December 1, 2008.

38-2404 Administrator or nursing home administrator, defined. Administrator or nursing home administrator means any individual who meets the education and training requirements of section 38-2419 and is responsible for planning, organizing, directing, and controlling the operation of a nursing home or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this section or any other provision of law, the administrator of an intermediate care facility for the mentally retarded may be either a licensed nursing home administrator or a qualified mental retardation professional.

Source: Laws 2007, LB463, § 819.
Operative date December 1, 2008.

38-2405 Administrator-in-training, defined. Administrator-in-training means a person who is undergoing training to become a nursing home administrator and is directly supervised in a nursing home by a certified preceptor.

Source: Laws 2007, LB463, § 820.
Operative date December 1, 2008.

38-2406 Board, defined. Board means the Board of Nursing Home Administration.

Source: Laws 2007, LB463, § 821.
Operative date December 1, 2008.

38-2407 Certified preceptor, defined. Certified preceptor means a person who is currently licensed by the State of Nebraska as a nursing home administrator, has three years of experience as a nursing home administrator, has practiced within the last two years in a nursing home, and is approved by the department to supervise an administrator-in-training or a person in a mentoring program.

Source: Laws 2007, LB463, § 822.
Operative date December 1, 2008.

38-2408 Core educational requirements, defined. Core educational requirements means courses necessary for licensure as a nursing home administrator and includes courses in patient care and services, social services, financial management, administration, and rules, regulations, and standards relating to the operation of a health care facility.

Source: Laws 2007, LB463, § 823.
Operative date December 1, 2008.

38-2409 Degree or advanced degree, defined. Degree or advanced degree means a baccalaureate, master's, or doctorate degree from an accredited institution and which includes studies in the core educational requirements.

Source: Laws 2007, LB463, § 824.
Operative date December 1, 2008.

38-2410 Degree or advanced degree in health care, defined. Degree or advanced degree in health care means a baccalaureate, master's, or doctorate degree from an accredited institution in health care, health care administration, or services.

Source: Laws 2007, LB463, § 825.
Operative date December 1, 2008.

38-2411 Integrated system, defined. Integrated system means a health and human services organization offering different levels of licensed care or treatment on the same premises.

Source: Laws 2007, LB463, § 826.
Operative date December 1, 2008.

38-2412 Internship, defined. Internship means that aspect of the educational program of the associate degree in long-term care administration which allows for practical experience in a nursing home and occurs under the supervision of a certified preceptor.

Source: Laws 2007, LB463, § 827.
Operative date December 1, 2008.

38-2413 Nursing degree, defined. Nursing degree means a degree or diploma in nursing from an accredited program of nursing approved by the Board of Nursing.

Source: Laws 2007, LB463, § 828.
Operative date December 1, 2008.

38-2414 Nursing home or home for the aged or infirm, defined. Nursing home or home for the aged or infirm means any institution or facility licensed as a nursing facility or a skilled nursing facility by the department pursuant to the Health Care Facility Licensure Act, whether proprietary or nonprofit, including, but not limited to, homes for the aged or infirm owned or administered by the federal or state government or an agency or political subdivision thereof.

Source: Laws 2007, LB463, § 829.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2415 Previous work experience, defined. Previous work experience means at least two years working full time in a nursing home or previous work experience in health care administration.

Source: Laws 2007, LB463, § 830.
Operative date December 1, 2008.

38-2416 Previous work experience in health care administration, defined. Previous work experience in health care administration means at least two years working full time as an administrator or director of nursing of a hospital with a long-term care unit or assisted-living facility or director of nursing in a nursing home.

Source: Laws 2007, LB463, § 831.
Operative date December 1, 2008.

38-2417 Board; members; qualifications. (1) The board shall consist of seven professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165.

(2) The professional members shall consist of: (a) Two members who hold active licenses and are currently employed in the management, operation, or ownership of proprietary homes for the aged or infirm or nursing homes that serve the aged or infirm in Nebraska; (b) two members who hold active licenses and are currently employed in the management or operation of a nonprofit home for the aged or infirm or nursing home or hospital caring for chronically ill or infirm, aged patients; (c) one member who is a member of the faculty of a college or university located in the state who is actively engaged in a teaching program relating to business administration, social work, gerontology, or some other aspect of the administration of health care facilities; (d) one member who is a licensed physician and surgeon with a demonstrated interest in long-term care; and (e) one member who is a licensed registered nurse.

Source: Laws 1972, LB 1040, § 5; Laws 1980, LB 686, § 3; Laws 1988, LB 693, § 10; Laws 1989, LB 344, § 20; R.S.Supp.,1989, § 71-2045.01; Laws 1994, LB 1223, § 76; Laws 1996, LB 1044, § 755; Laws 1999, LB 411, § 9; Laws 2002, LB 1062, § 61; R.S.1943, (2003), § 71-6065; Laws 2007, LB296, § 649; Laws 2007, LB463, § 832.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2418 Nursing home; operation; licensed administrator required; provisional license. Each nursing home within the state shall be operated under the supervision of an administrator duly licensed in the manner provided in the Nursing Home Administrator Practice Act. If there is a vacancy in the position of licensed administrator of a nursing home, the owner, governing body, or other appropriate authority of the nursing home may select a person to apply for a provisional license in nursing home administration to serve as the administrator of such facility.

Source: Laws 1972, LB 1040, § 8; Laws 1980, LB 686, § 5; Laws 1988, LB 693, § 12; R.S.Supp.,1988, § 71-2045.04; R.S.1943, (2003), § 71-6062; Laws 2007, LB463, § 833.
Operative date December 1, 2008.

38-2419 Nursing home administrator; license; issuance; qualifications; duties. (1) The department shall issue a license to an applicant who submits (a) satisfactory evidence of completion of (i) an associate degree which includes the core educational requirements and an administrator-in-training program under a certified preceptor, (ii) a degree or an advanced degree and a mentoring program under a certified preceptor, (iii) a nursing degree, previous work experience in health care administration, and a mentoring program under a certified preceptor, (iv) a degree or an advanced degree in health care and previous work experience in health care administration, or (v) an associate degree which includes the core educational requirements, previous work experience, and a mentoring program under a certified preceptor,

and (b) evidence of successful passage of the National Association of Boards of Examiners for Nursing Home Administration written examination.

(2) The department shall license administrators in accordance with the Nursing Home Administrator Practice Act and standards, rules, and regulations adopted and promulgated by the department, with the recommendation of the board. The license shall not be transferable or assignable.

(3) Each administrator shall be responsible for and oversee the operation of only one licensed facility or one integrated system, except that an administrator may make application to the department for approval to be responsible for and oversee the operations of a maximum of three licensed facilities if such facilities are located within two hours' travel time of each other or to act in the dual role of administrator and department head but not in the dual role of administrator and director of nursing. In reviewing the application, the department may consider the proximity of the facilities and the number of licensed beds in each facility. An administrator responsible for and overseeing the operations of any integrated system is subject to disciplinary action against his or her license for any regulatory violations within each system.

(4)(a) Notwithstanding the provisions of the Nursing Home Administrator Practice Act, the department shall issue a license as a nursing home administrator to an applicant who will function as the administrator of a facility caring primarily for persons with head injuries and associated disorders who submits satisfactory evidence that he or she (i) has at least two years of experience working with persons with head injuries or severe physical disabilities, at least one of which was spent in an administrative capacity, (ii) is (A) a psychologist with at least a master's degree in psychology from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (B) a physician licensed under the Uniform Credentialing Act to practice medicine and surgery or psychiatry and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (C) an educator with at least a master's degree in education from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, or (D) a certified social worker, a certified master social worker, or a licensed mental health practitioner certified or licensed under the Uniform Credentialing Act and has at least three years of social work or mental health practice experience and specialized training or one or more years of experience working with persons who have experienced traumatic head injury or are severely physically disabled, and (iii) is of good moral character. The applicant shall also provide his or her social security number.

(b) A license issued pursuant to this subsection shall be issued without examination and without the requirement of completion of an administrator-in-training or mentoring program. Such license may be renewed without the completion of any continuing competency requirements.

Source: Laws 1972, LB 1040, § 6; Laws 1980, LB 686, § 4; Laws 1988, LB 352, § 126; R.S.1943, (1986), § 71-2045.02; Laws 1988, LB 693, § 3; Laws 1989, LB 344, § 19; Laws 1989, LB 733, § 1; R.S.Supp.,1989, § 71-2041.02; Laws 1991, LB 58, § 1; Laws 1991, LB 456, § 38; Laws 1992, LB 1019, § 83; Laws 1993, LB 669, § 59; Laws 1994, LB 1223, § 74; Laws 1997, LB 608, § 23; Laws 1997, LB 752, § 193; Laws 1999, LB 411, § 2; Laws 2002, LB 1021, § 92; Laws 2002, LB 1062, § 56; Laws 2003, LB 242, § 133; Laws 2005, LB 246, § 2; R.S.Supp.,2006, § 71-6054; Laws 2007, LB463, § 834.
Operative date December 1, 2008.

38-2420 Administrator-in-training program; mentoring program; certified preceptor; requirements. (1) Except as provided in subdivision (1)(a)(iv) and subsection (4) of section 38-2419, in order for a person to become licensed as a nursing home administrator, he or she shall complete an administrator-in-training program or a mentoring program. The administrator-in-training program shall occur in a nursing home under the direct supervision of a certified preceptor, and it may be gained as an internship which is part of an approved associate degree. A mentoring program shall occur in a nursing home under the supervision of a certified preceptor. The certified preceptor in a mentoring program need not be at such facility during the period of such supervision but shall be available to assist with questions or problems as needed. A mentoring program may be gained as an internship which is part of a degree or advanced degree. A person in a mentoring program may apply for a provisional license as provided in section 38-2423.

(2) An applicant may begin his or her administrator-in-training or mentoring program upon application to the department with the required fee, evidence that he or she has completed at least fifty percent of the core educational requirements, and evidence of an agreement between the certified preceptor and the applicant for at least six hundred forty hours of training and experience, to be gained in not less than four months. Such training shall occur in a Nebraska-licensed nursing home under a certified preceptor.

(3) The certified preceptor shall submit a report to the department by the fifth day of each month for the duration of the administrator-in-training or mentoring program, describing the nature and extent of training completed to date. At the conclusion of the program, the certified preceptor shall report to the department whether the applicant has successfully completed the board's approved course for such program. With the concurrence of the certified preceptor, the applicant may remain in such program until successfully completed or may reapply to enter another administrator-in-training or mentoring program.

(4)(a) The administrator-in-training or mentoring program shall occur under the supervision of a certified preceptor. An applicant to become a certified preceptor shall (i) be currently licensed as a nursing home administrator in the State of Nebraska, (ii) have three years of experience as a nursing home administrator in the five years immediately preceding certification, and (iii) complete a preceptor training course approved by the board.

(b) All preceptor certificates shall expire on December 31 of every fourth year beginning December 31, 2000. Before acting on an application for renewal, the board shall review the performance of the applicant. Such review may include consideration of survey and complaint

information, student evaluations, and any other related information deemed relevant by the board. The board may deny an application for renewal upon a finding that the applicant's performance has been unsatisfactory based on such review.

Source: Laws 1988, LB 693, § 4; Laws 1989, LB 733, § 2; R.S.Supp.,1989, § 71-2041.03; Laws 1991, LB 455, § 1; Laws 1992, LB 1019, § 84; Laws 1999, LB 411, § 3; Laws 2003, LB 242, § 134; R.S.1943, (2003), § 71-6055; Laws 2007, LB463, § 835.
Operative date December 1, 2008.

38-2421 License; reciprocity. The department may issue a license to any person who holds a current nursing home administrator license from another jurisdiction and is at least nineteen years old.

Source: Laws 1988, LB 693, § 5; Laws 1989, LB 733, § 3; R.S.Supp.,1989, § 71-2041.04; Laws 1991, LB 455, § 2; Laws 1992, LB 1019, § 85; Laws 1999, LB 411, § 4; Laws 2002, LB 1062, § 57; R.S.1943, (2003), § 71-6056; Laws 2007, LB463, § 836.
Operative date December 1, 2008.

38-2422 Application for examination. Any person desiring to take the examination for a nursing home administrator license may request to take the examination any time after receiving notification of registration as an administrator-in-training or a person in a mentoring program, but the license shall not be issued until the board receives documentation of completion of the administrator-in-training or mentoring program and completion of all licensure requirements.

Source: Laws 1988, LB 693, § 7; R.S.Supp.,1988, § 71-2041.06; Laws 1992, LB 1019, § 86; Laws 1999, LB 411, § 5; R.S.1943, (2003), § 71-6058; Laws 2007, LB463, § 837.
Operative date December 1, 2008.

38-2423 Acting administrator; provisional license required; application; requirements. (1) A person selected to apply for a provisional license in nursing home administration to serve as the administrator of such facility shall apply to the department. Such license, if issued, shall be valid for no more than one hundred eighty calendar days and may be issued to an individual not otherwise qualified for licensure as a nursing home administrator in order to maintain the daily operations of the facility and may not be renewed. The department may grant an extension not to exceed ninety days if the person seeking the provisional license is in a mentoring program.

(2) The department may issue a provisional license to an individual who has applied for a mentoring program. Such provisional license will allow the applicant to serve as administrator in the specified facility for one hundred eighty calendar days and may not be renewed. The board may grant an extension not to exceed ninety days if the person seeking the provisional license is in a mentoring program.

(3) An applicant for a provisional license under this section shall: (a) Be at least twenty-one years of age; (b) be employed on a full-time basis of not less than forty hours per week to perform the duties of the nursing home administrator; and (c) have no history of unprofessional conduct or denial or disciplinary action against a nursing home administrator license or a license to practice any other profession by any lawful licensing authority.

Source: Laws 1972, LB 1040, § 12; Laws 1980, LB 686, § 9; R.S.1943, (1986), § 71-2045.08; Laws 1992, LB 1019, § 89; Laws 1999, LB 411, § 8; Laws 2003, LB 242, § 137; R.S.1943, (2003), § 71-6063; Laws 2007, LB463, § 838.
Operative date December 1, 2008.

38-2424 Providers of continuing competency activities; review and approval; fee. Providers of continuing competency activities or licensees may submit courses for review and approval by the board. Each provider or licensee applying for approval of continuing competency activities shall pay an application fee for each program, seminar, or course submitted for review.

Source: Laws 1972, LB 1040, § 7; Laws 1986, LB 926, § 58; Laws 1988, LB 693, § 11; R.S.Supp.,1988, § 71-2045.03; Laws 1992, LB 1019, § 87; Laws 1999, LB 411, § 6; Laws 2002, LB 1021, § 93; Laws 2002, LB 1062, § 59; Laws 2003, LB 242, § 135; R.S.1943, (2003), § 71-6060; Laws 2007, LB463, § 839.
Operative date December 1, 2008.

38-2425 Fees. The department shall establish and collect fees for credentialing under the Nursing Home Administrator Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 840.
Operative date December 1, 2008.

ARTICLE 25

OCCUPATIONAL THERAPY PRACTICE ACT

Section.

38-2501 Act, how cited. Sections 38-2501 to 38-2531 shall be known and may be cited as the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 29; Laws 2003, LB 242, § 138; Laws 2004, LB 1005, § 120; R.S.Supp.,2006, § 71-6101; Laws 2007, LB463, § 841.
Operative date December 1, 2008.

38-2502 Purpose of act. In order to (1) safeguard the public health, safety, and welfare, (2) protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants, and (4) assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of the Occupational Therapy Practice Act to provide for the regulation of occupational therapists.

Source: Laws 1984, LB 761, § 30; R.S.1943, (2003) § 71-6102; Laws 2007, LB463, § 842.
Operative date December 1, 2008.

38-2503 Definitions, where found. For purposes of the Occupational Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2504 to 38-2514 apply.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1; Laws 2002, LB 1021, § 95; Laws 2004, LB 1005, § 121; R.S.Supp.,2006, § 71-6103; Laws 2007, LB296, § 651; Laws 2007, LB463, § 843.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 651, with LB 463, section 843, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2504 Association, defined. Association means a recognized national or state association for occupational therapy.

Source: Laws 2007, LB463, § 844.
Operative date December 1, 2008.

38-2505 Board, defined. Board means the Board of Occupational Therapy Practice.

Source: Laws 2007, LB463, § 845.
Operative date December 1, 2008.

38-2506 Deep thermal agent modalities, defined. Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities does not include the use of diathermy or lasers.

Source: Laws 2007, LB463, § 846.
Operative date December 1, 2008.

38-2507 Electrotherapeutic agent modalities, defined. Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities does not include the use of ultraviolet light.

Source: Laws 2007, LB463, § 847.
Operative date December 1, 2008.

38-2508 Mechanical devices, defined. Mechanical devices means intermittent compression devices. Mechanical devices does not include devices to perform spinal traction.

Source: Laws 2007, LB463, § 848.
Operative date December 1, 2008.

38-2509 Occupational therapist, defined. Occupational therapist means a person holding a current license to practice occupational therapy.

Source: Laws 2007, LB463, § 849.
Operative date December 1, 2008.

38-2510 Occupational therapy, defined. (1) Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independent function, prevent further disability, and achieve and maintain health and productivity.

(2) Occupational therapy encompasses evaluation, treatment, and consultation and may include (a) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes, (b) adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance, (c) disability prevention methods and techniques which facilitate the development or safe application of performance skills, and (d) health promotion strategies and practices which enhance performance abilities.

Source: Laws 2007, LB463, § 850.
Operative date December 1, 2008.

38-2511 Occupational therapy aide, defined. Occupational therapy aide means a person who is not licensed under the Occupational Therapy Practice Act and who provides supportive services to occupational therapists and occupational therapy assistants.

Source: Laws 2007, LB463, § 851.
Operative date December 1, 2008.

38-2512 Occupational therapy assistant, defined. Occupational therapy assistant means a person holding a current license to assist in the practice of occupational therapy.

Source: Laws 2007, LB463, § 852.
Operative date December 1, 2008.

38-2513 Physical agent modalities, defined. Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices.

Source: Laws 2007, LB463, § 853.
Operative date December 1, 2008.

38-2514 Superficial thermal agent modalities, defined. Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Source: Laws 2007, LB463, § 854.
Operative date December 1, 2008.

38-2515 Board; members; qualifications. The board shall consist of at least four members appointed pursuant to section 38-158. Three of the persons appointed shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointments. Two of the persons appointed shall be occupational therapists and one shall be either an occupational therapist or an occupational therapy assistant and all shall be holders of active licenses issued under the Occupational Therapy Practice Act during their terms. One of the persons appointed shall be a public member who meets the requirements of section 38-165.

Source: Laws 1984, LB 761, § 43; Laws 1987, LB 473, § 62; Laws 1988, LB 1100, § 178; Laws 2001, LB 346, § 3; Laws 2002, LB 1021, § 97; Laws 2004, LB 1005, § 131; R.S.Supp.,2006, § 71-6115; Laws 2007, LB463, § 855.
Operative date December 1, 2008.

38-2516 Occupational therapist; therapy assistant; licensure required; activities and services not prohibited. No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless he or she is licensed in accordance with the Occupational Therapy Practice Act. Nothing in such act shall be construed to prevent:

(1) Any person licensed in this state pursuant to the Uniform Credentialing Act from engaging in the profession or occupation for which he or she is licensed;

(2) The activities and services of any person employed as an occupational therapist or occupational therapy assistant who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(3) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 38-2518 and 38-2519 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(5) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122; R.S.Supp.,2006, § 71-6104; Laws 2007, LB463, § 856.
Operative date December 1, 2008.

38-2517 Occupational therapist; therapy assistant; temporary license. Any person who has applied to take the examination under section 38-2518 or 38-2519 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary license to practice as an occupational therapist or an occupational therapy assistant. A temporary license shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall not be renewed if the applicant has failed the examination. The temporary license may be extended by the department, with the recommendation of the board. In no case may a temporary license be extended beyond one year.

An individual holding a temporary permit on December 1, 2008, shall be deemed to be holding a temporary license under the Occupational Therapy Practice Act on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S.1943, (2003), § 71-6105; Laws 2007, LB463, § 857.
Operative date December 1, 2008.

38-2518 Occupational therapist; license; application; requirements. (1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 38-2520.

(2) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858. Operative date December 1, 2008.

38-2519 Occupational therapy assistant; license; application; requirements; term. (1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 38-2520.

(2) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859. Operative date December 1, 2008.

38-2520 Examination; requirements. (1) Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by a written examination which tests his or her knowledge of the basic and clinical sciences relating to occupational therapy and

occupational therapy theory and practice including, but not limited to, professional skills and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance. The board may choose a nationally standardized occupational therapist and occupational therapy assistant entry-level examination.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine.

Source: Laws 1984, LB 761, § 36; Laws 1985, LB 250, § 18; Laws 1987, LB 473, § 61; R.S.1943, (2003), § 71-6108; Laws 2007, LB463, § 860.
Operative date December 1, 2008.

38-2521 Continuing competency requirements; waiver. The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by an accredited school or college which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861.
Operative date December 1, 2008.

38-2522 Applicant for licensure; continuing competency requirements. An applicant for licensure to practice as an occupational therapist who has met the education and examination requirements in section 38-2518 or to practice as an occupational therapy assistant who has met the education and examination requirements in section 38-2519, 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, § 862.
Operative date December 1, 2008.

38-2523 Applicant for licensure; reciprocity; continuing competency requirements. An applicant for licensure to practice as an occupational therapist or to practice as an occupational therapy assistant 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, § 863.
Operative date December 1, 2008.

38-2524 Fees. The department shall establish and collect fees for credentialing activities under the Occupational Therapy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1984, LB 761, § 42; Laws 1986, LB 926, § 63; Laws 1988, LB 1100, § 177; Laws 1992, LB 1019, § 92; Laws 1994, LB 1223, § 78; Laws 2003, LB 242, § 143; R.S.1943, (2003), § 71-6114; Laws 2007, LB463, § 864.
Operative date December 1, 2008.

38-2525 Occupational therapy aide; supervision requirements. An occupational therapy aide shall function under the guidance and responsibility of an occupational therapist and may be supervised by an occupational therapist or an occupational therapy assistant for specifically selected routine tasks for which the aide has been trained and has demonstrated competence. The aide shall comply with supervision requirements developed by the board. The board shall develop supervision requirements for aides which are consistent with prevailing professional standards.

Source: Laws 2004, LB 1005, § 123; R.S.Supp.,2006, § 71-6117; Laws 2007, LB463, § 865.
Operative date December 1, 2008.

38-2526 Occupational therapist; services authorized. An occupational therapist may perform the following services:

(1) Evaluate, develop, improve, sustain, or restore skills in activities of daily living, work activities, or productive activities, including instrumental activities of daily living, and play and leisure activities;

(2) Evaluate, develop, remediate, or restore sensorimotor, cognitive, or psychosocial components of performance;

(3) Design, fabricate, apply, or train in the use of assistive technology or orthotic devices and train in the use of prosthetic devices;

(4) Adapt environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;

(5) If certified pursuant to section 38-2530, apply physical agent modalities as an adjunct to or in preparation for engagement in occupations when applied by a practitioner who has documented evidence of possessing the theoretical background and technical skills for safe and competent use;

(6) Evaluate and provide intervention in collaboration with the client, family, caregiver, or others;

(7) Educate the client, family, caregiver, or others in carrying out appropriate nonskilled interventions; and

(8) Consult with groups, programs, organizations, or communities to provide population-based services.

Source: Laws 2004, LB 1005, § 124; R.S.Supp.,2006, § 71-6118; Laws 2007, LB463, § 866. Operative date December 1, 2008.

38-2527 Occupational therapy assistant; supervision required. An occupational therapy assistant may deliver occupational therapy services enumerated in section 38-2526 in collaboration with and under the supervision of an occupational therapist.

Source: Laws 2004, LB 1005, § 125; R.S.Supp.,2006, § 71-6119; Laws 2007, LB463, § 867. Operative date December 1, 2008.

38-2528 Referrals. (1) An occupational therapist may accept a referral from a licensed health care professional for the purpose of evaluation and rehabilitative treatment which may include, but not be limited to, consultation, rehabilitation, screening, prevention, and patient education services.

(2) Referrals may be for an individual case or may be for an established treatment program that includes occupational therapy services. If programmatic, the individual shall meet the criteria for admission to the program and protocol for the treatment program shall be established by the treatment team members.

(3) Referrals shall be in writing, except that oral referrals may be accepted if they are followed by a written and signed request of the person making the referral within thirty days after the day on which the patient consults with the occupational therapist.

Source: Laws 2004, LB 1005, § 126; R.S.Supp.,2006, § 71-6120; Laws 2007, LB463, § 868. Operative date December 1, 2008.

38-2529 Direct access to services. The public may have direct access to occupational therapy services.

Source: Laws 2004, LB 1005, § 127; R.S.Supp.,2006, § 71-6121; Laws 2007, LB463, § 869. Operative date December 1, 2008.

38-2530 Physical agent modalities; certification required. (1) In order to apply physical agent modalities, an occupational therapist shall be certified pursuant to this section.

The department shall issue a certificate to an occupational therapist to administer a physical agent modality if the occupational therapist:

(a) Has successfully completed a training course approved by the board and passed an examination approved by the board on the physical agent modality;

(b) Is certified as a hand therapist by the Hand Therapy Certification Commission or other equivalent entity recognized by the board;

(c) Has a minimum of five years of experience in the use of the physical agent modality and has passed an examination approved by the board on the physical agent modality; or

(d) Has completed education during a basic educational program which included demonstration of competencies for application of the physical agent modality.

(2) The department shall issue a certificate to authorize an occupational therapy assistant to set up and implement treatment using superficial thermal agent modalities if the occupational therapy assistant has successfully completed a training course approved by the board and passed an examination approved by the board. Such set up and implementation shall only be done under the onsite supervision of an occupational therapist certified to administer superficial thermal agent modalities.

(3) An occupational therapist shall not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

Source: Laws 2004, LB 1005, § 128; R.S.Supp.,2006, § 71-6122; Laws 2007, LB463, § 870.
Operative date December 1, 2008.

38-2531 Rules and regulations. (1) The board shall adopt and promulgate rules and regulations regarding role delineation for occupational therapy assistants and continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. Such 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.

(2) The board may adopt and promulgate rules and regulations governing the training courses for an occupational therapist to be certified to administer a physical agent modality. The board may adopt and promulgate rules and regulations governing the training course for an occupational therapy assistant to be certified to set up and implement superficial thermal agent modalities. In adopting such rules and regulations, the board shall give consideration to the levels of training and experience which are required, in the opinion of the board, to protect the public health, safety, and welfare and to insure, to the greatest extent possible, the efficient, adequate, and safe practice of occupational therapy. Such rules and regulations shall include the approval of examinations and the passing score for such examinations for certification.

Source: Laws 2004, LB 1005, § 130; Laws 2005, LB 244, § 1; R.S.Supp.,2006, § 71-6123; Laws 2007, LB463, § 871.
Operative date December 1, 2008.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Section.

38-2601 Act, how cited. Sections 38-2601 to 38-2623 shall be known and may be cited as the Optometry Practice Act.

Source: Laws 2007, LB463, § 872.
Operative date December 1, 2008.

38-2602 Definitions, where found. For purposes of the Optometry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2603 to 38-2605 apply.

Source: Laws 2007, LB463, § 874.
Operative date December 1, 2008.

38-2603 Board, defined. Board means the Board of Optometry.

Source: Laws 2007, LB463, § 875.
Operative date December 1, 2008.

38-2604 Pharmaceutical agents, defined. (1) Pharmaceutical agents, for diagnostic purposes, means anesthetics, cycloplegics, and mydriatics.

(2) Pharmaceutical agents, for therapeutic purposes, means topical ophthalmic pharmaceutical agents which treat eye diseases, infection, inflammation, and superficial abrasions, or oral analgesics, including oral analgesics enumerated in Schedules III and IV of section 28-405 necessary to treat conditions of the eye, ocular adnexa, or visual system, or oral pharmaceutical agents for the treatment of diseases or infections of the eye, ocular adnexa, or visual system, or oral anti-inflammatory agents to treat conditions of the eye, ocular adnexa, or visual system, excluding steroids and immunosuppressive agents.

Source: Laws 1979, LB 9, § 4; Laws 1986, LB 131, § 2; Laws 1993, LB 429, § 4; Laws 1998, LB 369, § 4; R.S.1943, (2003), § 71-1,135.01; Laws 2007, LB463, § 876.
Operative date December 1, 2008.

38-2605 Practice of optometry, defined. (1) The practice of optometry means one or a combination of the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(e) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source: Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S.1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; R.S.1943, (2003), § 71-1,133; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 20, with LB 463, section 877, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2606 Board; members; qualifications. The board shall consist of four members, including three licensed optometrists and one public member.

Source: Laws 2007, LB463, § 878.
Operative date December 1, 2008.

38-2607 Practice of optometry; activities not included. The practice of optometry shall not be construed to:

(1) Include merchants or dealers who sell glasses as merchandise in an established place of business or who sell contact lenses from a prescription for contact lenses written by an optometrist or a person licensed to practice medicine and surgery and who do not profess to be optometrists or practice optometry;

(2) Restrict, expand, or otherwise alter the scope of practice governed by other statutes; or

(3) Include the performance by an optometric assistant, under the supervision of a licensed optometrist, of duties prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1927, c. 167, § 112, p. 487; C.S.1929, § 71-1602; R.S.1943, § 71-1,134; Laws 1979, LB 9, § 2; Laws 1998, LB 369, § 2; Laws 2002, LB 1062, § 30; R.S.1943, (2003), § 71-1,134; Laws 2007, LB236, § 21; Laws 2007, LB463, § 879.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 21, with LB 463, section 879, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2608 Optometry; license; requirements. Every applicant for a license to practice optometry shall: (1) Present proof that he or she is a graduate of an accredited school or college of optometry; and (2) pass an examination approved by the board. The examination shall cover all subject matter included in the practice of optometry.

Source: Laws 1927, c. 167, § 113, p. 487; C.S.1929, § 71-1603; R.S.1943, § 71-1,135; Laws 1979, LB 9, § 3; Laws 1989, LB 323, § 3; Laws 1998, LB 369, § 3; Laws 1999, LB 828, § 95; R.S.1943, (2003), § 71-1,135; Laws 2007, LB236, § 22; Laws 2007, LB463, § 880.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 22, with LB 463, section 880, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2609 Applicant for licensure based on license outside the state; requirements. In addition to the standards set by the board pursuant to section 38-126, an applicant for licensure based on a license in another state or territory of the United States or the District of Columbia must have been actively engaged in the practice of optometry for at least one of the three years immediately preceding the application for licensure in Nebraska.

Source: Laws 2007, LB463, § 881.
Operative date December 1, 2008.

38-2610 License; renewal; statement as to use of pharmaceutical agents. In issuing a license or renewal, the department, with the recommendation of the board, shall state whether such person licensed in the practice of optometry has been certified to use pharmaceutical agents pursuant to section 38-2613, 38-2614, or 38-2615 and shall determine an appropriate means to further identify those persons who are certified in the diagnostic use of such agents or the therapeutic use of such agents.

Source: Laws 1979, LB 9, § 7; Laws 1986, LB 131, § 4; Laws 1993, LB 429, § 5; Laws 1998, LB 369, § 7; Laws 1999, LB 828, § 98; R.S.1943, (2003), § 71-1,135.04; Laws 2007, LB236, § 24; Laws 2007, LB463, § 882.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 24, with LB 463, section 882, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2611 Continuing competency requirements; waiver. The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a credential holder submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the credential holder's control pursuant to such section, such circumstances shall include situations in which:

(1) The credential holder has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the renewal date; and

(2) The credential holder was initially licensed within the twenty-six months immediately preceding the renewal date.

Source: Laws 1965, c. 415, § 2, p. 1325; Laws 1985, LB 250, § 14; Laws 1986, LB 926, § 46; Laws 1988, LB 1100, § 42; Laws 1997, LB 307, § 123; Laws 1999, LB 828, § 99; Laws 2001, LB 209, § 10; Laws 2002, LB 1021, § 21; R.S.1943, (2003), § 71-1,136.01; Laws 2007, LB236, § 27; Laws 2007, LB463, § 883.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 27, with LB 463, section 883, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2612 Fees. The department shall establish and collect fees for credentialing under the Optometry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 884.
Operative date December 1, 2008.

38-2613 Optometrist; pharmaceutical agents; use; certification. (1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (1)(b) of section 38-2605, if such person is certified by

the department, with the recommendation of the board, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes.

(2) Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; R.S.1943, (2003), § 71-1,135.02; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

38-2614 Optometrist; pharmaceutical agents; certification of courses of instruction; board approval. (1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (1)(b) or (c) of section 38-2605 if such person is certified by the department, with the recommendation of the board, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma.

(2) Such certification shall require (a) satisfactory completion of classroom education and clinical training which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 2007, LB247, § 74; Laws 2007, LB463, § 886.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 886, and was amended by Laws 2007, LB 247, section 74.

38-2615 Optometrist; applicability of requirements. After January 1, 2000, only an optometrist licensed in this state prior to April 30, 1987, may practice optometry without meeting the requirements and obtaining certification required by sections 38-2613 and 38-2614.

Source: Laws 2007, LB247, § 75; Laws 2007, LB463, § 887.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 887, and was amended by Laws 2007, LB 247, section 75.

38-2616 Optometry; approved schools; requirements. No school of optometry shall be approved by the board as an accredited school unless the school is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education.

Source: Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S.1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; R.S.1943, (2003), § 71-1,136; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 26, with LB 296, section 342, and LB 463, section 889, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2617 Use of pharmaceutical agents by licensed optometrist; standard of care. A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

Source: Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; R.S.1943, (2003), § 71-1,135.06; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 25, with LB 463, section 890, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2618 Optometric assistants; authorized. Any licensed optometrist may employ optometric assistants. Such assistants, under the supervision of a licensed optometrist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 2002, LB 1062, § 31; R.S.1943, (2003), § 71-1,135.07; Laws 2007, LB463, § 891. Operative date December 1, 2008.

38-2619 Optometry; patient's freedom of choice. No agencies of the state or its subdivisions administering relief, public assistance, public welfare assistance, or other health service under the laws of this state, including the public schools, shall in the performance of their duties, interfere with any patient's freedom of choice in the selection of practitioners licensed to perform examinations and provide treatment within the field for which their respective licenses entitle them to practice.

Source: Laws 1967, c. 431, § 1, p. 1319; R.S.1943, (2003), § 71-1,136.04; Laws 2007, LB236, § 28; Laws 2007, LB463, § 892.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 28, with LB 463, section 892, to reflect all amendments.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Provisions for insuring cost of service of optometrist, see section 44-513.

38-2620 Nebraska Optometry Education Assistance Contract Program; purpose. There is hereby established the Nebraska Optometry Education Assistance Contract Program for the purpose of providing opportunities for citizens of this state desiring to pursue study in the field of optometry at accredited schools and colleges outside the state.

Source: Laws 1974, LB 911, § 1; R.S.1943, (2003), § 71-1,136.05; Laws 2007, LB463, § 893. Operative date December 1, 2008.

38-2621 Program; Board of Regents; administer; rules and regulations; adopt; reports; conditions. The program established by section 38-2620 shall be administered by the Board of Regents of the University of Nebraska. The Board of Regents shall adopt appropriate rules and regulations to carry out sections 38-2620 to 38-2623 and negotiate contract arrangements with accredited schools and colleges of optometry, as provided in section 38-2616, for the admission and education of qualified applicants who are citizens of Nebraska and who have demonstrated their interest, aptitude, and readiness for study in the field of optometry. The Board of Regents shall require reports each year from institutions receiving payments showing the progress and suitability of each student being aided and containing such other information as such board deems proper.

Source: Laws 1974, LB 911, § 2; R.S.1943, (2003), § 71-1,136.06; Laws 2007, LB463, § 894. Operative date December 1, 2008.

38-2622 Program; financial assistance; number of students. The total number of students receiving annual financial payments made under sections 38-2620 to 38-2623 shall not exceed sixty students during any school year. No more than fifteen of these students shall be students enrolling in a college of optometry for their first year of instruction.

Source: Laws 1974, LB 911, § 3; R.S.1943, (2003), § 71-1,136.07; Laws 2007, LB463, § 895. Operative date December 1, 2008.

38-2623 Program; financial assistance; limitation. Financial assistance under sections 38-2620 to 38-2623 shall be continued not to exceed four years until the enrolled student has received a degree in optometry. Contracts with schools and colleges shall set forth terms and provisions for continuation of such payments.

Source: Laws 1974, LB 911, § 4; R.S.1943, (2003), § 71-1,136.08; Laws 2007, LB463, § 896. Operative date December 1, 2008.

ARTICLE 27

PERFUSION PRACTICE ACT

Section.

38-2701 Act, how cited. Sections 38-2701 to 38-2712 shall be known and may be cited as the Perfusion Practice Act.

Source: Laws 2007, LB236, § 8; R.S.Supp.,2007, § 71-1,390; Laws 2007, LB247, § 76.

Note: This section passed in Laws 2007, LB 236, section 8, and was amended by Laws 2007, LB 247, section 76.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

38-2702 Legislative findings and declarations. The Legislature finds and declares that the public interest requires the regulation of the practice of perfusion and the establishment of clear licensure standards for perfusionists and that the health and welfare of the residents of the State of Nebraska will be protected by identifying to the public those individuals who are qualified and legally authorized to practice perfusion.

Source: Laws 2007, LB236, § 9; R.S.Supp.,2007, § 71-1,391.
Operative date December 1, 2008.

38-2703 Terms, defined. For purposes of the Perfusion Practice Act:

(1) Board means the Board of Medicine and Surgery;

(2) Committee means the Perfusionist Committee created under section 38-2712;

(3) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;

(4) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:

(a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;

(b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(c) The use of techniques involving blood management, advanced life support, and other related functions; and

(d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:

(i) The administration of:

(A) Pharmacological and therapeutic agents; and

(B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) The performance and use of:

(A) Anticoagulation monitoring and analysis;

(B) Physiologic monitoring and analysis;

(C) Blood gas and chemistry monitoring and analysis;

(D) Hematologic monitoring and analysis;

(E) Hypothermia and hyperthermia;

(F) Hemoconcentration and hemodilution; and

(G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(5) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Source: Laws 2007, LB236, § 10; R.S.Supp., 2007, § 71-1,392.
Operative date December 1, 2008.

38-2704 License required; exceptions. After September 1, 2007, no person shall practice perfusion, whether or not compensation is received or expected, unless the person holds a license to practice perfusion under the Perfusion Practice Act, except that nothing in the act shall be construed to:

(1) Prohibit any person credentialed to practice under any other law from engaging in the practice for which he or she is credentialed;

(2) Prohibit any student enrolled in a bona fide perfusion training program recognized by the board from performing those duties which are necessary for the student's course of study, if the duties are performed under the supervision and direction of a perfusionist who is on duty and immediately available in the assigned patient care area; or

(3) Prohibit any person from practicing perfusion within the scope of his or her official duties when employed by an agency, bureau, or division of the federal government, serving

in the Armed Forces or the Public Health Service of the United States, or employed by the Veterans Administration.

Source: Laws 2007, LB236, § 11; R.S.Supp., 2007, § 71-1,393.
Operative date December 1, 2008.

38-2705 License requirements. To be eligible to be licensed as a perfusionist, an applicant shall fulfill the following requirements:

(1) Submit evidence of successful completion of a perfusion education program with standards established by the Accreditation Committee for Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs or a program with substantially equivalent education standards approved by the board; and

(2) Submit evidence of successful completion of the certification examinations offered by the American Board of Cardiovascular Perfusion, or its successor, or a substantially equivalent examination approved by the board.

Source: Laws 2007, LB236, § 12; R.S.Supp.,2007, § 71-1,394; Laws 2007, LB247, § 77.

Note: This section passed in Laws 2007, LB 236, section 12, and was amended by Laws 2007, LB 247, section 77.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

38-2706 Education and examination requirements; waiver. The board may waive the education and examination requirements under section 38-2705 for an applicant who:

(1) Within one hundred eighty days after September 1, 2007, submits evidence satisfactory to the board that he or she has been operating cardiopulmonary bypass systems for cardiac surgical patients as his or her primary function in a licensed health care facility for at least two of the last ten years prior to September 1, 2007;

(2) Submits evidence of holding a current certificate as a Certified Clinical Perfusionist issued by the American Board of Cardiovascular Perfusion, or its successor; or

(3) Submits evidence of holding a credential as a perfusionist issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state.

Source: Laws 2007, LB236, § 13; R.S.Supp., 2007, § 71-1,395.
Operative date December 1, 2008.

38-2707 Temporary license. The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations

adopted under the act. A temporary license shall be surrendered to the department upon its expiration.

Source: Laws 2007, LB236, § 14; R.S.Supp., 2007, § 71-1,396.
Operative date December 1, 2008.

38-2708 Fees. The department shall establish and collect fees for initial licensure and renewal under the Perfusion Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB247, § 78.
Operative date December 1, 2008.

38-2709 Title and abbreviation; use. No person shall use the title Perfusionist, the abbreviation LP, or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of perfusion unless licensed to practice perfusion.

Source: Laws 2007, LB236, § 16; R.S.Supp., 2007, § 71-1,398.
Operative date December 1, 2008.

38-2710 Rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Perfusion Practice Act.

Source: Laws 2007, LB236, § 17; R.S.Supp., 2007, § 71-1,399.
Operative date December 1, 2008.

38-2711 Code of ethics; record of licensees. The board shall adopt and publish a code of ethics for perfusionists and maintain a record of every perfusionist licensed in this state which includes his or her place of business, place of residence, and license date and number.

Source: Laws 2007, LB236, § 18; R.S.Supp., 2007, § 71-1,400.
Operative date December 1, 2008.

38-2712 Perfusionist Committee; created; membership; powers and duties; expenses. (1) There is created the Perfusionist Committee which shall review and make recommendations to the board regarding all matters relating to perfusionists that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) perfusionist education, (c) scope of practice, (d) proceedings arising relating to disciplinary actions, (e) perfusionist licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two perfusionists and one physician who has clinical experience with perfusionists. The physician member may also be a member of the Board of Medicine and Surgery. The chairperson of the committee shall be elected by a majority vote of the committee members. All appointments shall be for five-year terms, at staggered intervals. Members shall serve no more than two consecutive terms. Reappointments shall be made by the State Board of Health.

(3) The committee shall meet on a regular basis, and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 2007, LB236, § 19; R.S.Supp., 2007, § 71-1,401.
Operative date December 1, 2008.

ARTICLE 28

PHARMACY PRACTICE ACT

Section.

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.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 897, and was amended by Laws 2007, LB 247, section 79.

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.
Operative date December 1, 2008.

38-2803 Accredited hospital or clinic, defined. Accredited hospital or clinic means a hospital or clinic approved by the board.

Source: Laws 1978, LB 675, § 4; Laws 1996, LB 1044, § 457; Laws 1999, LB 828, § 117; R.S.1943, (2003), § 71-1,147.20; Laws 2007, LB463, § 899.
Operative date December 1, 2008.

38-2804 Accredited pharmacy program, defined. An accredited pharmacy program means one approved by the board upon the recommendation of the accrediting committee of the Accreditation Council for Pharmacy Education. It shall be a pharmacy program which maintains at least a three-year course in pharmacy, consisting of not less than thirty-two weeks of instruction each school year. Such pharmacy program shall require as a condition to enrollment therein two full years of college or university credit. The combined course shall consist of five years of college or university credit each year of which shall consist of not less than thirty-two weeks of instruction.

Source: Laws 1927, c. 167, § 125, p. 492; C.S.1929, § 71-1806; Laws 1939, c. 91, § 2, p. 393; C.S.Supp.,1941, § 71-1806; Laws 1943, c. 151, § 3, p. 553; R.S.1943, § 71-1,146; Laws 1971, LB 350, § 4; Laws 1999, LB 828, § 111; Laws 2004, LB 1005, § 16; R.S.Supp.,2006, § 71-1,146; Laws 2007, LB463, § 900.
Operative date December 1, 2008.

38-2805 Accredited school or college of pharmacy, defined. Accredited school or college of pharmacy means a school or college of pharmacy or a department of pharmacy of a university approved by the board pursuant to section 38-2804.

Source: Laws 1978, LB 675, § 5; Laws 1999, LB 828, § 118; R.S.1943, (2003), § 71-1,147.21; Laws 2007, LB463, § 901.
Operative date December 1, 2008.

38-2806 Administer, defined. Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.

Source: Laws 2007, LB463, § 902.
Operative date December 1, 2008.

38-2807 Administration, defined. Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.

Source: Laws 2007, LB463, § 903.
Operative date December 1, 2008.

38-2808 Board, defined. Board means the Board of Pharmacy.

Source: Laws 2007, LB463, § 904.
Operative date December 1, 2008.

38-2809 Caregiver, defined. Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient.

Source: Laws 2007, LB463, § 905.
Operative date December 1, 2008.

38-2810 Chart order, defined. Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription.

Source: Laws 2007, LB463, § 906.
Operative date December 1, 2008.

38-2811 Compounding, defined. Compounding means the preparation of components into a drug product (1) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist or (2) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of drugs or devices in anticipation of receiving medical orders based upon routine, regularly observed prescribing patterns.

Source: Laws 2007, LB463, § 907.
Operative date December 1, 2008.

38-2812 Delegated dispensing, defined. Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 38-2872 to 38-2889 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations.

Source: Laws 2007, LB463, § 908.
Operative date December 1, 2008.

38-2813 Deliver or delivery, defined. Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration.

Source: Laws 2007, LB463, § 909.
Operative date December 1, 2008.

38-2814 Device, defined. Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so.

Source: Laws 2007, LB463, § 910.
Operative date December 1, 2008.

38-2815 Dialysis drug or device distributor, defined. Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription.

Source: Laws 2007, LB463, § 911.
Operative date December 1, 2008.

38-2816 Dialysis drug or device distributor worker, defined. Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription.

Source: Laws 2007, LB463, § 912.
Operative date December 1, 2008.

38-2817 Dispense or dispensing, defined. (1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering.

Source: Laws 2007, LB463, § 913.
Operative date December 1, 2008.

38-2818 Distribute, defined. Distribute means to deliver a drug or device, other than by administering or dispensing.

Source: Laws 2007, LB463, § 914.
Operative date December 1, 2008.

38-2819 Drugs, medicines, and medicinal substances, defined. Drugs, medicines, and medicinal substances means (1) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

Source: Laws 2007, LB463, § 915.
Operative date December 1, 2008.

38-2820 Electronic signature, defined. Electronic signature has the same meaning as in section 86-621.

Source: Laws 2007, LB463, § 916.
Operative date December 1, 2008.

38-2821 Electronic transmission, defined. Electronic transmission means transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Source: Laws 2007, LB463, § 917.
Operative date December 1, 2008.

38-2822 Facility, defined. Facility means a health care facility as defined in section 71-413.

Source: Laws 2007, LB463, § 918.
Operative date December 1, 2008.

38-2823 Facsimile, defined. Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end.

Source: Laws 2007, LB463, § 919.
Operative date December 1, 2008.

38-2824 Graduate pharmacy education or approved program, defined. Graduate pharmacy education or approved program means a period of supervised educational training by a graduate of an accredited school or college of pharmacy, which training has been approved by the board.

Source: Laws 1978, LB 675, § 3; Laws 1996, LB 1044, § 456; Laws 1999, LB 828, § 116; R.S.1943, (2003), § 71-1,147.19; Laws 2007, LB463, § 920.
Operative date December 1, 2008.

38-2825 Hospital, defined. Hospital has the same meaning as in section 71-419.

Source: Laws 2007, LB463, § 921.
Operative date December 1, 2008.

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.

Source: Laws 2007, LB463, § 922.
Operative date December 1, 2008.

38-2827 Medical gas distributor, defined. Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user.

Source: Laws 2007, LB463, § 923.
Operative date December 1, 2008.

38-2828 Medical order, defined. Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

Source: Laws 2007, LB463, § 924.
Operative date December 1, 2008.

38-2829 Nonprescription drugs, defined. Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government.

Source: Laws 2007, LB463, § 925.
Operative date December 1, 2008.

38-2830 Patient counseling, defined. Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 38-2869.

Source: Laws 2007, LB463, § 926.
Operative date December 1, 2008.

38-2831 Pharmaceutical care, defined. (1) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology.

(2) Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient.

Source: Laws 2007, LB463, § 927.
Operative date December 1, 2008.

38-2832 Pharmacist, defined. Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy.

Source: Laws 2007, LB463, § 928.
Operative date December 1, 2008.

38-2833 Pharmacist in charge, defined. Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued and who works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less.

Source: Laws 2007, LB463, § 929.
Operative date December 1, 2008.

38-2834 Pharmacist intern, defined. Pharmacist intern means a person who meets the requirements of section 38-2854.

Source: Laws 2007, LB463, § 930.
Operative date December 1, 2008.

38-2835 Pharmacy, defined. Pharmacy has the same meaning as in section 71-425.

Source: Laws 2007, LB463, § 931.
Operative date December 1, 2008.

38-2836 Pharmacy technician, defined. Pharmacy technician means an individual registered under sections 38-2890 to 38-2897.

Source: Laws 2007, LB247, § 80; Laws 2007, LB463, § 932.
Operative date December 1, 2008.

Note: This section passed in Laws 2007, LB 463, section 932, and was amended by Laws 2007, LB 247, section 80.

38-2837 Practice of pharmacy, defined. (1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records.

(2) The active practice of pharmacy means the performance of the functions set out in this section by a pharmacist as his or her principal or ordinary occupation.

Source: Laws 2007, LB463, § 933.
Operative date December 1, 2008.

38-2838 Practitioner, defined. Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian.

Source: Laws 2007, LB463, § 934.
Operative date December 1, 2008.

38-2839 Prescribe, defined. Prescribe means to issue a medical order.

Source: Laws 2007, LB463, § 935.
Operative date December 1, 2008.

38-2840 Prescription, defined. Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order.

Source: Laws 2007, LB463, § 936.
Operative date December 1, 2008.

38-2841 Prescription drug or device or legend drug or device, defined. Prescription drug or device or legend drug or device means:

(1) A drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(a) Caution: Federal law prohibits dispensing without prescription;

(b) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(c) "Rx Only"; or

(2) A drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

Source: Laws 2007, LB463, § 937.
Operative date December 1, 2008.

38-2842 Public health clinic, defined. Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416.

Source: Laws 2007, LB463, § 938.
Operative date December 1, 2008.

38-2843 Public health clinic worker, defined. Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription.

Source: Laws 2007, LB463, § 939.
Operative date December 1, 2008.

38-2844 Signature, defined. Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature.

Source: Laws 2007, LB463, § 940.
Operative date December 1, 2008.

38-2845 Supervision, defined. Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a facility, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility.

Source: Laws 2007, LB463, § 941.
Operative date December 1, 2008.

38-2846 Temporary educational permit, defined. Temporary educational permit means a permit to practice pharmacy in a supervised educational program approved by the board.

Source: Laws 1978, LB 675, § 2; Laws 1999, LB 828, § 115; R.S.1943, (2003), § 71-1,147.18; Laws 2007, LB463, § 942.
Operative date December 1, 2008.

38-2847 Verification, defined. Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy.

Source: Laws 2007, LB463, § 943.
Operative date December 1, 2008.

38-2848 Written control procedures and guidelines, defined. Written control procedures and guidelines means the document prepared and signed by the pharmacist in charge and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians and the functions which they may perform.

Source: Laws 2007, LB463, § 944.
Operative date December 1, 2008.

38-2849 Board; membership; qualifications. The board shall be composed of five members, including four actively practicing pharmacists, at least one of whom practices within the confines of a hospital, and one public member who is interested in the health of the people of Nebraska.

Source: Laws 2007, LB463, § 945.
Operative date December 1, 2008.

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; and

(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.

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. Operative date December 1, 2008.

Cross Reference

Nebraska Liquor Control Act, see section 53-101.

38-2851 Pharmacist; license; requirements. (1) Every applicant for examination and licensure as a pharmacist shall be a graduate of an accredited pharmacy program, except that an applicant who is a graduate of a pharmacy program located outside of the United States and which is not accredited shall be deemed to have satisfied the requirement of being a graduate of an accredited pharmacy program upon providing evidence satisfactory to the department, with the recommendation of the board, of graduation from such foreign pharmacy program and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant shall (a) file proof of sufficient internship experience in pharmacy, under the supervision of a licensed pharmacist, as may be required by the department, with the recommendation of the board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy, (b) have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited pharmacy program, (c) pass an examination approved by the board, and (d) present proof satisfactory to the department, with the recommendation of the board, that he or she (i) has passed an examination approved by the board within the last three years, (ii) has been in the active practice of the profession of pharmacy in another state, territory, or the

District of Columbia for one year within the three years immediately preceding the application for licensure, (iii) has become board-certified in a specialty recognized by the Board of Pharmaceutical Specialties within the seven years immediately preceding the application for licensure, or (iv) has completed continuing competency in pharmacy that is approved by the Board of Pharmacy.

(3) Proof of the qualifications for licensure prescribed in this section shall be made to the satisfaction of the department, with the recommendation of the board, substantiated by proper affidavits. In all cases the actual time of attendance in an accredited pharmacy program shall be certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or university. Service and experience in pharmacy under the supervision of a licensed pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure.

Source: Laws 1927, c. 167, § 123, p. 491; C.S.1929, § 71-1804; Laws 1939, c. 91, § 1, p. 393; C.S.Supp.,1941, § 71-1804; Laws 1943, c. 151, § 2, p. 552; R.S.1943, § 71-1,145; Laws 1971, LB 350, § 3; Laws 1974, LB 811, § 14; Laws 1983, LB 476, § 14; Laws 1996, LB 1044, § 449; Laws 1999, LB 828, § 110; R.S.Supp.,2000, § 71-1,145; Laws 2001, LB 398, § 30; Laws 2003, LB 242, § 51; Laws 2003, LB 245, § 13; Laws 2004, LB 1005, § 15; R.S.Supp.,2006, § 71-1,143.01; Laws 2007, LB296, § 345; Laws 2007, LB463, § 947.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 345, with LB 463, section 947, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2852 Examination; grade. Every applicant for licensure as a pharmacist shall be required to attain a grade to be determined by the board in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

Source: Laws 2007, LB463, § 948.
Operative date December 1, 2008.

38-2853 Pharmacy; temporary pharmacist license; renewal; fees. A temporary pharmacist license may be granted to persons meeting all of the qualifications for a pharmacist license except the requirement that they be citizens of the United States. Such temporary license shall be issued for a period of one year from the date of issuance and may be renewed each year thereafter for four additional years, and if the person so licensed has not become a citizen of the United States within five years of the date such temporary license was issued, such license shall terminate and the person so licensed shall have no further right to practice pharmacy in this state. If a temporary pharmacist licensee becomes a citizen of the United States while a temporary pharmacist license is in force and provides evidence thereof to the

department, a pharmacist license may be issued in place of such temporary license and no additional fee shall be charged unless such temporary license had already expired, in which case a renewal fee shall be charged. The applicant for a temporary pharmacist license shall submit proof of his or her eligibility and intent to become a citizen of the United States. The fees to be paid and procedures for the denial, suspension, revocation, or reinstatement of such temporary license shall be the same as for a pharmacist license.

Source: Laws 1973, LB 515, § 6; Laws 1996, LB 1044, § 450; R.S.1943, (1996), § 71-1,145.01; Laws 2001, LB 398, § 31; R.S.1943, (2003), § 71-1,143.02; Laws 2007, LB463, § 949.
Operative date December 1, 2008.

38-2854 Pharmacist intern; qualifications; registration; powers. (1) A pharmacist intern shall be (a) a student currently enrolled in an accredited pharmacy program, (b) a graduate of an accredited pharmacy program serving his or her internship, or (c) a graduate of a pharmacy program located outside the United States which is not accredited and who has successfully passed equivalency examinations approved by the board. Intern registration based on enrollment in or graduation from an accredited pharmacy program shall expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Intern registration based on graduation from a pharmacy program located outside of the United States which is not accredited shall expire not later than fifteen months after the date of issuance of the registration or at the time of professional licensure, whichever comes first.

(2) A pharmacist intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (a) the person to whom the pharmacy license is issued or a person in the actual employ of the pharmacy licensee or (b) the delegating pharmacist designated in a delegated dispensing agreement by a hospital with a delegated dispensing permit.

Source: Laws 2004, LB 1005, § 14; R.S.Supp.,2006, § 71-1,144; Laws 2007, LB463, § 950.
Operative date December 1, 2008.

38-2855 Pharmacy; temporary educational permits; issuance. The department, with the recommendation of the board, shall have authority to issue temporary educational permits to qualified applicants in accordance with the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 6; Laws 1996, LB 1044, § 458; Laws 1999, LB 828, § 119; R.S.1943, (2003), § 71-1,147.22; Laws 2007, LB463, § 951.
Operative date December 1, 2008.

38-2856 Temporary educational permit; practice pharmacy; conditions. The holder of a temporary educational permit shall be entitled to practice pharmacy while serving in a supervised educational program or in an approved graduate pharmacy education program conducted by an accredited hospital or clinic in the State of Nebraska or by an accredited school or college of pharmacy in the State of Nebraska. The holder of a temporary educational permit shall not be qualified to engage in the practice of pharmacy outside of the assigned

training program or outside the confines of the accredited hospital or clinic or the accredited school or college.

Source: Laws 1978, LB 675, § 7; R.S.1943, (2003), § 71-1,147.23; Laws 2007, LB463, § 952.
Operative date December 1, 2008.

38-2857 Temporary educational permit; issuance; when. Before any temporary educational permit is issued pursuant to the Pharmacy Practice Act, the department, with the recommendation of the board, shall determine that the applicant for such permit has met all of the requirements of the act relating to issuing any such permit.

Source: Laws 1978, LB 675, § 8; Laws 1996, LB 1044, § 459; Laws 1999, LB 828, § 120; R.S.1943, (2003), § 71-1,147.24; Laws 2007, LB463, § 953.
Operative date December 1, 2008.

38-2858 Holder of temporary educational permit; rules and regulations; applicability. Except as otherwise provided by law, the holder of any temporary educational permit shall be subject to all of the rules and regulations prescribed for pharmacists regularly licensed in the State of Nebraska and such other rules and regulations as may be adopted by the department, with the recommendation of the board, with respect to such permits in order to carry out the purposes of the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 9; Laws 1996, LB 1044, § 460; Laws 1999, LB 828, § 121; R.S.1943, (2003), § 71-1,147.25; Laws 2007, LB463, § 954.
Operative date December 1, 2008.

38-2859 Temporary educational permit; period valid; renewal. The duration of any temporary educational permit issued pursuant to the Pharmacy Practice Act shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the department but in no case shall it be renewed for more than five one-year periods.

Source: Laws 1978, LB 675, § 10; Laws 1996, LB 1044, § 461; R.S.1943, (2003), § 71-1,147.26; Laws 2007, LB296, § 346; Laws 2007, LB463, § 955.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 346, with LB 463, section 955, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2860 Temporary educational permit. The department, with the recommendation of the board, may issue to all qualified graduates of accredited colleges of pharmacy, who are eligible for the examination provided for in section 38-2851, and who make application for such examination, a temporary educational permit. Such permit shall be issued only for the duration of the time between the date of the examination and the date of licensure granted as a result of such examination.

Source: Laws 1978, LB 675, § 11; Laws 2001, LB 398, § 40; R.S.1943, (2003), § 71-1,147.27; Laws 2007, LB463, § 956.
Operative date December 1, 2008.

38-2861 Temporary educational permit; serve in approved program; application; contents. Before granting any temporary educational permit, the department shall ascertain by evidence satisfactory to the department, with the recommendation of the board, that an accredited hospital or clinic or an accredited school or college of pharmacy in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved. Any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved graduate pharmacy educational program with respect to which such permit shall apply.

Source: Laws 1978, LB 675, § 12; Laws 1996, LB 1044, § 462; R.S.1943, (2003), § 71-1,147.28; Laws 2007, LB296, § 347; Laws 2007, LB463, § 957.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 347, with LB 463, section 957, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2862 Temporary educational permit; recommendation for issuance; by whom. The recommendation of the board to the department for the issuance of any temporary educational permits shall be made at regular meetings of the board, but the chairperson or one other member of the board, as specifically selected by the members of the board, and its executive secretary, jointly shall have the power to recommend to the department the issuance of such permits between the meetings of the board.

Source: Laws 1978, LB 675, § 13; Laws 1999, LB 828, § 122; R.S.1943, (2003), § 71-1,147.29; Laws 2007, LB463, § 958.
Operative date December 1, 2008.

38-2863 Temporary educational permit; fee. The recipient of a temporary educational permit shall pay the required fee.

Source: Laws 1978, LB 675, § 14; Laws 1996, LB 1044, § 463; Laws 1999, LB 828, § 123; Laws 2003, LB 242, § 52; R.S.1943, (2003), § 71-1,147.30; Laws 2007, LB463, § 959.
Operative date December 1, 2008.

38-2864 Temporary educational permit; disciplinary actions; appeal. Any temporary educational permit granted under the authority of the Pharmacy Practice Act may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a pharmacist license could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the department shall be held in the same manner as for the denial of a pharmacist license. The

final order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1978, LB 675, § 15; Laws 1988, LB 352, § 119; Laws 1996, LB 1044, § 464; Laws 1999, LB 828, § 124; Laws 2001, LB 398, § 41; R.S.1943, (2003), § 71-1,147.31; Laws 2007, LB296, § 348; Laws 2007, LB463, § 960.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 348, with LB 463, section 960, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-2865 Holder; temporary educational permit; receive license; when. The holder of a temporary educational permit shall not be entitled to a pharmacist license in the State of Nebraska unless and until such individual meets all of the requirements of law for issuing such pharmacist license.

Source: Laws 1978, LB 675, § 16; Laws 2001, LB 398, § 42; R.S.1943, (2003), § 71-1,147.32; Laws 2007, LB463, § 961.
Operative date December 1, 2008.

38-2866 Pharmacist; powers. Unless specifically limited by the board or the department, a pharmacist may (1) engage in the practice of pharmacy, (2) use the abbreviation R.P. or the title licensed pharmacist, (3) enter into delegated dispensing agreements, and (4) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration.

Source: Laws 2001, LB 398, § 33; R.S.1943, (2003), § 71-1,143.03; Laws 2007, LB463, § 962.
Operative date December 1, 2008.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty. (1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897 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 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.

Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2868 Pharmacist; patient information; privileged. (1) Information with regard to a patient maintained by a pharmacist pursuant to the Pharmacy Practice Act shall be privileged and confidential and may be released only to (a) the patient or the caregiver of the patient or others authorized by the patient or his or her legal representative, (b) a physician treating the patient, (c) other physicians or pharmacists when, in the professional judgment of the pharmacist, such release is necessary to protect the patient's health or well-being, or (d) other persons or governmental agencies authorized by law to receive such information.

(2) Nothing in this section shall prohibit the release of confidential information to researchers conducting biomedical, pharmaco-epidemiologic, or pharmaco-economic research pursuant to health research approved by an institutional review board which is established in accordance with 21 C.F.R. parts 50 and 56 or 45 C.F.R. part 46, as such parts existed on April 1, 2006.

Source: Laws 1993, LB 536, § 56; Laws 1994, LB 900, § 8; Laws 2001, LB 398, § 46; R.S.1943, (2003), § 71-1,147.36; Laws 2007, LB463, § 964.
Operative date December 1, 2008.

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; or

(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.

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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 26, with LB 463, section 965, to reflect all amendments.
Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2870 Medical order; duration; dispensing; transmission. (1) All medical orders shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in section 28-414, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, (c) by facsimile or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile or electronic transmission of a medical order which is not signed by the practitioner. Such order shall be treated the same as an oral medical order.

(4) Except as otherwise provided in section 28-414, any medical order transmitted by facsimile or electronic transmission shall (a) be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy, (b) identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law, and (c) serve as the original medical order if all other requirements of this subsection are satisfied. Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966.
Operative date December 1, 2008.

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 face of 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 except when a single refill is transferred for emergency or traveling purposes;

(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. Operative date December 1, 2008.

38-2872 Delegated dispensing agreements; authorized. A pharmacist may delegate certain specified dispensing tasks and functions under specified conditions and limitations to another person by entering into a delegated dispensing agreement which serves as the basis for a delegated dispensing permit. A delegated dispensing agreement shall include the address of the site where the dispensing will occur, the name and license number of each pharmacist who will assume the responsibilities of the delegating pharmacist, the name and signature of any individual who will be dispensing pursuant to such agreement, the manner in which inspections must be conducted and documented by the delegating pharmacist, and any other information required by the board. A delegated dispensing agreement shall not become effective until a delegated dispensing permit based upon such agreement is issued by the department, with the recommendation of the board, pursuant to section 38-2873.

Source: Laws 2001, LB 398, § 47; R.S.1943, (2003), § 71-1,147.62; Laws 2007, LB463, § 968. Operative date December 1, 2008.

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, dialysis drug or device distributor, or medical gas 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. Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2874 Delegated dispensing site; inspection; requirements; fees. (1) Before a delegated dispensing permit may be issued by the department, with the recommendation of the board, a pharmacy inspector of the board shall conduct an onsite inspection of the delegated dispensing site. A hospital applying for a delegated dispensing permit shall not be subject to an initial inspection or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(2) Each permittee shall have the delegated dispensing site inspected at least once on an annual basis. Such inspection may be conducted by self-inspection or other compliance assurance modalities, when approved by the board, as authorized in the rules and regulations of the department. A hospital with a delegated dispensing permit shall not be subject to annual

inspections or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(3) Any applicant or permittee who fails to meet the requirements of the board or department to dispense drugs or devices pursuant to a delegated dispensing permit shall, prior to dispensing (a) have the delegated dispensing site reinspected by a pharmacy inspector of the board and (b) pay any reinspection fees.

(4) The department, with the recommendation of the board, shall set inspection fees by rule and regulation not to exceed the fees established for pharmacy inspections required to obtain a pharmacy license under the Health Care Facility Licensure Act. The department shall remit inspection fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2001, LB 398, § 49; Laws 2003, LB 242, § 54; R.S.1943, (2003), § 71-1,147.64; Laws 2007, LB463, § 970.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2875 Delegated dispensing permit; complaint; investigation; costs. If a complaint is filed against a delegated dispensing permittee or any staff member, volunteer, or consultant in association with work performed under a delegated dispensing permit and if the complaint is found to be valid, the cost of investigating the complaint and any followup inspections shall be calculated by the board based upon the actual costs incurred and the cost shall be borne by the permittee being investigated. All costs collected by the department shall be remitted to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. If the complaint is not found to be valid, the cost of the investigation shall be paid from the fund.

Source: Laws 1994, LB 900, § 12; Laws 1998, LB 1073, § 67; Laws 2001, LB 398, § 50; Laws 2003, LB 242, § 53; R.S.1943, (2003), § 71-1,147.42; Laws 2007, LB463, § 971.
Operative date December 1, 2008.

38-2876 Delegated dispensing permit; disciplinary actions. The department, with the recommendation of the board, may deny an application for a delegated dispensing permit, revoke, limit, or suspend a delegated dispensing permit, or refuse renewal of a delegated dispensing permit for a violation of section 38-178 or 38-179 or for any violation of the Pharmacy Practice Act and any rules and regulations adopted and promulgated by the department, with the recommendation of the board, pursuant to the act.

Source: Laws 1994, LB 900, § 13; Laws 1998, LB 1073, § 68; Laws 2001, LB 398, § 51; R.S.1943, (2003), § 71-1,147.43; Laws 2007, LB463, § 972.
Operative date December 1, 2008.

38-2877 Delegated dispensing permit; denial or disciplinary actions; notice; hearing; procedure. (1) If the department, with the recommendation of the board,

determines to deny an application for a delegated dispensing permit or to revoke, limit, suspend, or refuse renewal of a delegated dispensing permit, the department shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 38-2879.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department. The proceedings shall be summary in nature and triable as equity actions. Affidavits may be received in evidence in the discretion of the director. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 1994, LB 900, § 14; Laws 1996, LB 1044, § 466; Laws 1998, LB 1073, § 69; Laws 2001, LB 398, § 52; R.S.1943, (2003), § 71-1,147.44; Laws 2007, LB296, § 350; Laws 2007, LB463, § 973.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 350, with LB 463, section 973, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2878 Delegated dispensing permit; orders authorized; civil penalty. (1) Upon the completion of any hearing pursuant to section 38-2877, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure against the permittee;

(b) Place the permittee on probation;

(c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated

or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;

(e) Enter an order of suspension of the permit;

(f) Enter an order of revocation of the permit; and

(g) Dismiss the action.

(2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked as provided in section 38-148.

(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 a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall remit any collected civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 900, § 15; Laws 1998, LB 1073, § 70; Laws 1999, LB 828, § 126; Laws 2001, LB 398, § 53; R.S.1943, (2003), § 71-1,147.45; Laws 2007, LB296, § 351; Laws 2007, LB463, § 974.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2879 Delegated dispensing permit; revocation or suspension; procedure; appeal. (1) A petition for the revocation or suspension of a delegated dispensing permit may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is dispensing pursuant to a delegated dispensing permit. The petition shall be filed with the board and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (name of permittee) to dispense drugs and devices. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the board, it shall be forwarded to the department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges may be served by any sheriff or constable or by any person especially appointed by the department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee shall not engage in the dispensing of drugs and devices after revocation of the permit or during the time for which it is suspended.

(3) Any permittee shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a delegated dispensing permit. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 900, § 16; Laws 1998, LB 1073, § 71; Laws 2001, LB 398, § 54; R.S.1943, (2003), § 71-1,147.46; Laws 2007, LB463, § 975.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-2880 Delegated dispensing permit; criminal charges; when. When appropriate, the Attorney General, with the recommendation of the board, shall initiate criminal charges against pharmacists or other persons who knowingly permit individuals dispensing pursuant to a delegated dispensing permit to perform professional duties which require the expertise or professional judgment of a pharmacist.

Source: Laws 1994, LB 900, § 17; Laws 2001, LB 398, § 55; R.S.1943, (2003), § 71-1,147.47; Laws 2007, LB463, § 976.
Operative date December 1, 2008.

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, which shall be based on the recommendations of the Public Health Clinic Formulary Advisory Committee, 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 approve for inclusion in the formulary any drug or device not approved by the committee or 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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 352, with LB 463, section 977, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2882 Delegated dispensing permit; delegating pharmacist; duties. (1) Each delegated dispensing permittee shall have an actively practicing Nebraska-licensed pharmacist listed as the delegating pharmacist in the delegated dispensing agreement. The delegating pharmacist shall be responsible for all activities set forth in his or her delegated dispensing agreement. The delegating pharmacist shall approve and maintain a policy and procedure manual governing those aspects of the practice of pharmacy covered by the delegated dispensing agreement.

(2) The delegating pharmacist for a public health clinic or a dialysis drug or device distributor shall be physically in the clinic or distributor's facility at least once every thirty days. The delegating pharmacist shall conduct and document monthly inspections of all activities and responsibilities listed in subsection (3) of this section and under his or her delegated dispensing agreement.

(3) The delegating pharmacist for a public health clinic shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic. The delegating pharmacist for a dialysis drug or device distributor shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor.

Source: Laws 1994, LB 900, § 20; Laws 1998, LB 1073, § 74; Laws 2001, LB 398, § 57; R.S.1943, (2003), § 71-1,147.50; Laws 2007, LB463, § 978.
Operative date December 1, 2008.

38-2883 Delegated dispensing permit; liability; when. The delegating pharmacist or the on-call pharmacist shall not be held liable for acts or omissions on the part of an individual dispensing pursuant to the delegated dispensing permit.

Source: Laws 1994, LB 900, § 22; Laws 2001, LB 398, § 58; R.S.1943, (2003), § 71-1,147.52; Laws 2007, LB463, § 979.
Operative date December 1, 2008.

38-2884 Delegated dispensing permit; public health clinic; dispensing requirements. Under a delegated dispensing permit for a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written onsite by a practitioner;

(3) The only prescriptions to be refilled under the delegated dispensing permit are prescriptions for oral contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the director;

(5) The dispensing of authorized refills of oral contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker;

(6) All drugs or devices are prepackaged by the manufacturer or at a public health clinic by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed under the authority of public health clinics are properly labeled at all times. For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if prepackaged by a pharmacist, the lot number and calculated expiration date. Calculated expiration date means the expiration date on the manufacturer's container or one year from the date the drug is repackaged, whichever is earlier;

(c) Directions for patient use;

(d) The quantity of drug in the container;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing health care professional;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 38-2881; and

(10) At any time that dispensing is occurring from a public health clinic, the delegating pharmacist for the public health clinic or on-call pharmacist in Nebraska is available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The delegating pharmacist or on-call pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Source: Laws 1994, LB 900, § 23; Laws 1996, LB 1044, § 468; Laws 1996, LB 1108, § 18; Laws 1998, LB 1073, § 76; Laws 2001, LB 398, § 59; Laws 2002, LB 1062, § 34; R.S.1943, (2003), § 71-1,147.53; Laws 2007, LB296, § 353; Laws 2007, LB463, § 980.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 353, with LB 463, section 980, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2885 Delegated dispensing permit; worker; qualifications. No person shall act as a public health clinic worker in a public health clinic or as a dialysis drug or device distributor worker for a dialysis drug or device distributor unless the person:

(1) Is at least eighteen years of age;

(2) Has earned a high school diploma or the equivalent;

(3) Has completed approved training as provided in section 38-2886; and

(4) Has demonstrated proficiency as provided in section 38-2887.

Source: Laws 1994, LB 900, § 24; Laws 1998, LB 1073, § 77; R.S.1943, (2003), § 71-1,147.54; Laws 2007, LB463, § 981.
Operative date December 1, 2008.

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. The board shall base its approval upon the standards determined by the Public Health Clinic Formulary Advisory Committee.

(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.
Operative date December 1, 2008.

38-2887 Delegated dispensing permit; worker; proficiency demonstration; supervision; liability. (1) A public health clinic worker or dialysis drug or device distributor worker shall demonstrate proficiency to the delegating pharmacist, according to the standards approved by the board. The delegating pharmacist shall document proficiency for each worker. In addition, a public health clinic worker shall be supervised by a licensed health care professional specified in subdivision (1) of section 38-2884 for the first month that such worker is dispensing refills of oral contraceptives.

(2) Following initial training and proficiency demonstration, the public health clinic worker or dialysis drug or device distributor worker shall demonstrate continued proficiency at least annually. A dialysis drug or device distributor worker shall attend annual training programs taught by a pharmacist. Documentation of such training shall be maintained in the worker's employee file.

(3) The public health clinic or dialysis drug or device distributor for which a public health clinic worker or dialysis drug or device distributor worker is working shall be liable for acts or omissions on the part of such worker.

Source: Laws 1994, LB 900, § 26; Laws 1996, LB 1108, § 19; Laws 1998, LB 1073, § 79; Laws 2001, LB 398, § 61; R.S.1943, (2003), § 71-1,147.56; Laws 2007, LB463, § 983.
Operative date December 1, 2008.

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. The board shall base its approval upon the standards determined by the Public Health Clinic Formulary Advisory Committee.

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.
Operative date December 1, 2008.

38-2889 Delegated dispensing permit; advisory committees; authorized; Public Health Clinic Formulary Advisory Committee; created; members; terms; removal. (1) The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

(2) The Public Health Clinic Formulary Advisory Committee is created. The committee shall consist of eight members as follows:

(a) Two members designated by the board;

(b) Two members who are employees of the department with knowledge of and interest in reproductive health and sexually transmitted diseases;

(c) Two members who are licensed pharmacists in this state and who are selected by the director. The Nebraska Pharmacists Association may submit to the director a list of five persons of recognized ability in the profession. If such a list is submitted, the director shall consider the names on such list and may appoint one or more of the persons so named. The director may appoint any qualified person even if such person is not named on the list submitted by the association; and

(d) Two members who are employees of public health clinics which hold or will hold a delegated dispensing permit and who are selected by the director from names recommended by such public health clinics.

(3) Designations and recommendations shall be made and submitted to the director in July prior to the third quarter meeting of the committee. Members shall serve for terms of two years each beginning with the third quarter meeting. Members may serve for consecutive terms as approved by the director. The director may remove a member of the committee for inefficiency, neglect of duty, or misconduct in office.

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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 354, with LB 463, section 985, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2890 Pharmacy technicians; registration; requirements. (1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 38-2893.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee.

(3) A pharmacy technician shall apply for registration as provided in this section within thirty days after being hired by a pharmacy or facility. Pharmacy technicians employed in that capacity on September 1, 2007, shall apply for registration within thirty days after September 1, 2007.

Source: Laws 2007, LB236, § 31; R.S.Supp., 2007, § 71-1,147.65.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

38-2891 Pharmacy technicians; authorized tasks. (1) A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent;

(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; R.S.Supp.,2007, § 71-1,147.66; Laws 2007, LB247, § 82.

Note: This section passed in Laws 2007, LB 236, section 32, and was amended by Laws 2007, LB 247, section 82.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

Cross Reference

Nebraska Drug Product Selection Act, see section 71-5401.01.

38-2892 Pharmacy technicians; employer responsibility. (1) A pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the establishment of written control procedures and guidelines governing the qualifications, onsite training, functions, supervision, and verification of the performance of pharmacy technicians. The supervision of such technicians at the place of employment shall be performed by the licensed pharmacist who is on duty in the facility with the pharmacy technicians.

(3)(a) Each pharmacy shall document, in a manner and method specified in the written control procedures and guidelines, the basic competence of the pharmacy technician prior to performance of tasks and functions by such technician. Such basic competence shall include, but not be limited to:

(i) Basic pharmaceutical nomenclature;

(ii) Metric system measures, both liquid and solid;

(iii) The meaning and use of Roman numerals;

(iv) Abbreviations used for dosages and directions to patients;

(v) Basic medical terms, including terms relating to ailments, diseases, or infirmities;

(vi) The use and operation of automated dispensing and record-keeping systems if used by the employing pharmacy;

(vii) Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such functions, and the employment, use, and functions of pharmacy technicians; and

(viii) The contents of the written control procedures and guidelines.

(b) Written control procedures and guidelines shall specify the functions that pharmacy technicians may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means used by the employing pharmacy to verify that the prescribed drug or device, the dosage form, and the directions provided to the patient or caregiver conform to the medical order authorizing the drug or device to be dispensed.

(c) The written control procedures and guidelines shall specify the manner in which the verification made prior to dispensing is documented.

(4) Each pharmacy or facility shall, before using pharmacy technicians, file with the board a copy of its written control procedures and guidelines and receive approval of its written control procedures and guidelines from the board. The board shall, within ninety days after the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request. Any written control procedures and guidelines for supportive pharmacy personnel that were filed by a pharmacy and approved by the board prior to September 1, 2007, shall be deemed to be approved and to apply to pharmacy technicians.

Source: Laws 2007, LB236, § 33; R.S.Supp., 2007, § 71-1,147.67.
Operative date December 1, 2008.

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; (c) any conviction of a nonalcohol, drug-related felony or misdemeanor reported to the department; and (d) 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.
Operative date December 1, 2008.

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 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.

Note: This section passed in Laws 2007, LB 236, section 35, and was amended by Laws 2007, LB 247, section 83.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

38-2895 Pharmacy technician; discipline against supervising pharmacist; enforcement orders. (1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist, performs functions not specified under approved written control procedures and guidelines, or performs functions without supervision and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to section 38-178, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Credentialing Act.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of

unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed.

Source: Laws 2007, LB236, § 36; R.S.Supp.,2007, § 71-1,147.70; Laws 2007, LB247, § 84.

Note: This section passed in Laws 2007, LB 236, section 36, and was amended by Laws 2007, LB 247, section 84.
Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

38-2896 Pharmacy technician; reapplication for registration; lifting of disciplinary sanction. A person whose registration has been denied, refused renewal, removed, or suspended from the Pharmacy Technician Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB236, § 37; R.S.Supp., 2007, § 71-1,147.71.
Operative date December 1, 2008.

38-2897 Pharmacy technician; duty to report impaired practitioner; immunity. A pharmacy technician shall report first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs. A report made to the department under this section shall be confidential. Any person making a report to the department under this section, except for those self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted by this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

Source: Laws 2007, LB236, § 38; R.S.Supp., 2007, § 71-1,147.72.
Operative date December 1, 2008.

38-2898 Fees. The department shall establish and collect fees for credentialing under the Pharmacy Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 988.
Operative date December 1, 2008.

38-2899 Rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement sections 71-2401 to 71-2405 and 71-2501 to 71-2512, the Mail Service Pharmacy Licensure Act, the Nebraska Drug Product Selection Act, the Pharmacy Practice Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent

with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Source: Laws 2001, LB 398, § 27; Laws 2003, LB 667, § 4; Laws 2005, LB 538, § 20; R.S.Supp.,2006, § 71-1,148; Laws 2007, LB463, § 989.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Mail Service Pharmacy Licensure Act, see section 71-2406.
Nebraska Drug Product Selection Act, see section 71-5401.01.
Uniform Controlled Substances Act, see section 28-401.01.

38-28,100 Department; drugs and devices; powers; appeal. The department may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee or permittee under the Pharmacy Practice Act at the time his or her license or permit is suspended or revoked or at the time the board or department refuses to renew his or her license or permit. Except as otherwise provided in this section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedure Act have expired or an appeal filed pursuant to the act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedure Act may order the department during the pendency of the appeal to sell sealed drugs or devices that are perishable. The proceeds of such a sale shall be deposited with the court.

Source: Laws 2001, LB 398, § 37; R.S.1943, (2003), § 71-1,149; Laws 2007, LB463, § 990.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

38-28,101 Pharmacy inspector. Only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the board.

Source: Laws 2007, LB463, § 991.
Operative date December 1, 2008.

38-28,102 Drugs; automatic or vending machine; prohibited acts. It shall be unlawful to distribute, dispense, or vend any drug by automatic or vending machine, except that this section shall not apply to a facility.

Source: Laws 1971, LB 350, § 12; Laws 2000, LB 819, § 91; Laws 2001, LB 398, § 39; R.S.1943, (2003), § 71-1,147.15; Laws 2007, LB463, § 992.
Operative date December 1, 2008.

38-28,103 Violation; penalty. Any person who does or commits any of the acts or things prohibited by the Pharmacy Practice Act or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor except as otherwise specifically provided.

Source: Laws 1961, c. 339, § 16, p. 1070; Laws 1977, LB 39, § 145; Laws 1993, LB 536, § 53; Laws 1994, LB 900, § 6; Laws 2001, LB 398, § 38; R.S.1943, (2003), § 71-1,147.13; Laws 2007, LB463, § 993. Operative date December 1, 2008.

ARTICLE 29

PHYSICAL THERAPY PRACTICE ACT

Section.

38-2901 Act, how cited. Sections 38-2901 to 38-2929 shall be known and may be cited as the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 118; R.S.Supp.,2006, § 71-1,362; Laws 2007, LB463, § 994. Operative date December 1, 2008.

38-2902 Purpose of act. The purpose of the Physical Therapy Practice Act is to update and recodify statutes relating to the practice of physical therapy. Nothing in the act shall be construed to expand the scope of practice of physical therapy as it existed prior to July 14, 2006.

Source: Laws 2006, LB 994, § 119; R.S.Supp.,2006, § 71-1,363; Laws 2007, LB463, § 995. Operative date December 1, 2008.

38-2903 Definitions, where found. For purposes of the Physical Therapy Practice Act, the definitions found in sections 38-2904 to 38-2918 apply.

Source: Laws 2006, LB 994, § 120; R.S.Supp.,2006, § 71-1,364; Laws 2007, LB463, § 996. Operative date December 1, 2008.

38-2904 Approved educational program, defined. Approved educational program means a program for the education and training of physical therapists and physical therapist assistants approved by the board pursuant to section 38-2926.

Source: Laws 2006, LB 994, § 121; R.S.Supp.,2006, § 71-1,365; Laws 2007, LB463, § 997. Operative date December 1, 2008.

38-2905 Board, defined. Board means the Board of Physical Therapy.

Source: Laws 2006, LB 994, § 122; R.S.Supp.,2006, § 71-1,366; Laws 2007, LB463, § 998. Operative date December 1, 2008.

38-2906 Direct supervision, defined. Direct supervision means supervision in which the supervising practitioner is physically present and immediately available and does not include supervision provided by means of telecommunication.

Source: Laws 2006, LB 994, § 124; R.S.Supp.,2006, § 71-1,368; Laws 2007, LB463, § 999. Operative date December 1, 2008.

38-2907 Evaluation, defined. Evaluation means the process of making clinical judgments based on data gathered from examination of a patient.

Source: Laws 2006, LB 994, § 125; R.S.Supp.,2006, § 71-1,369; Laws 2007, LB463, § 1000. Operative date December 1, 2008.

38-2908 General supervision, defined. General supervision means supervision either onsite or by means of telecommunication.

Source: Laws 2006, LB 994, § 126; R.S.Supp.,2006, § 71-1,370; Laws 2007, LB463, § 1001. Operative date December 1, 2008.

38-2909 Jurisdiction of the United States, defined. Jurisdiction of the United States means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any American territory.

Source: Laws 2006, LB 994, § 127; R.S.Supp.,2006, § 71-1,371; Laws 2007, LB463, § 1002. Operative date December 1, 2008.

38-2910 Mobilization or manual therapy, defined. Mobilization or manual therapy means a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissues, or both, throughout the normal physiological range of motion that are applied at varying speeds and amplitudes, without limitation.

Source: Laws 2006, LB 994, § 128; R.S.Supp.,2006, § 71-1,372; Laws 2007, LB463, § 1003. Operative date December 1, 2008.

38-2911 Non-treatment-related tasks, defined. Non-treatment-related tasks means clerical, housekeeping, facility maintenance, or patient transportation services related to the practice of physical therapy.

Source: Laws 2006, LB 994, § 129; R.S.Supp.,2006, § 71-1,373; Laws 2007, LB463, § 1004. Operative date December 1, 2008.

38-2912 Physical therapist, defined. Physical therapist means a person licensed to practice physical therapy under the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 130; R.S.Supp.,2006, § 71-1,374; Laws 2007, LB463, § 1005. Operative date December 1, 2008.

38-2913 Physical therapist assistant, defined. Physical therapist assistant means a person certified as a physical therapist assistant under the Physical Therapy Practice Act.

Source: Laws 2006, LB 994, § 131; R.S.Supp.,2006, § 71-1,375; Laws 2007, LB463, § 1006. Operative date December 1, 2008.

38-2914 Physical therapy or physiotherapy, defined. Physical therapy or physiotherapy means:

(1) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations, and disabilities or other conditions related to health and movement and, through analysis of the evaluative process, developing a plan of therapeutic intervention and prognosis while assessing the ongoing effects of the intervention;

(2) Alleviating impairment, functional limitation, or disabilities by designing, implementing, or modifying therapeutic interventions which may include any of the following: Therapeutic exercise; functional training in home, community, or work integration or reintegration related to physical movement and mobility; therapeutic massage; mobilization or manual therapy; recommendation, application, and fabrication of assistive, adaptive, protective, and supportive devices and equipment; airway clearance techniques; integumentary protection techniques; nonsurgical debridement and wound care; physical

agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction; but which does not include the making of a medical diagnosis;

(3) Purchasing, storing, and administering topical and aerosol medication in compliance with applicable rules and regulations of the Board of Pharmacy regarding the storage of such medication;

(4) Reducing the risk of injury, impairment, functional limitation, or disability, including the promotion and maintenance of fitness, health, and wellness; and

(5) Engaging in administration, consultation, education, and research.

Source: Laws 2006, LB 994, § 132; R.S.Supp.,2006, § 71-1,376; Laws 2007, LB463, § 1007. Operative date December 1, 2008.

38-2915 Physical therapy aide, defined. Physical therapy aide means a person who is trained under the direction of a physical therapist and who performs treatment-related and non-treatment-related tasks.

Source: Laws 2006, LB 994, § 133; R.S.Supp.,2006, § 71-1,377; Laws 2007, LB463, § 1008. Operative date December 1, 2008.

38-2916 Student, defined. Student means a person enrolled in an approved educational program.

Source: Laws 2006, LB 994, § 134; R.S.Supp.,2006, § 71-1,378; Laws 2007, LB463, § 1009. Operative date December 1, 2008.

38-2917 Testing, defined. Testing means standard methods and techniques used to gather data about a patient. Testing includes surface electromyography and, subject to approval of the board, fine wire electromyography. Testing excludes diagnostic needle electromyography.

Source: Laws 2006, LB 994, § 135; R.S.Supp.,2006, § 71-1,379; Laws 2007, LB463, § 1010. Operative date December 1, 2008.

38-2918 Treatment-related tasks, defined. Treatment-related tasks means activities related to the practice of physical therapy that do not require the clinical decisionmaking of a physical therapist or the clinical problem solving of a physical therapist assistant.

Source: Laws 2006, LB 994, § 136; R.S.Supp.,2006, § 71-1,380; Laws 2007, LB463, § 1011. Operative date December 1, 2008.

38-2919 License or certificate required. (1) No person may practice physical therapy, hold oneself out as a physical therapist or physiotherapist, or use the abbreviation PT in this state without being licensed by the department. No person may practice as a physical therapist assistant, hold oneself out as a physical therapist assistant, or use the abbreviation PTA in this state without being certified by the department.

(2) A physical therapist may use the title physical therapist or physiotherapist and the abbreviation PT in connection with his or her name or place of business. A physical therapist

assistant may use the title physical therapist assistant and the abbreviation PTA in connection with his or her name.

(3) No person who offers or provides services to another or bills another for services shall characterize such services as physical therapy or physiotherapy unless such services are provided by a physical therapist or a physical therapist assistant acting under the general supervision of a physical therapist.

Source: Laws 2006, LB 994, § 137; R.S.Supp.,2006, § 71-1,381; Laws 2007, LB463, § 1012. Operative date December 1, 2008.

38-2920 Exemptions. The following classes of persons shall not be construed to be engaged in the unauthorized practice of physical therapy:

(1) A member of another profession who is credentialed by the department and who is acting within the scope of practice of his or her profession;

(2) A student in an approved educational program who is performing physical therapy or related services within the scope of such program and under the direct supervision of a physical therapist;

(3) A person practicing physical therapy or as a physical therapist assistant in this state who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) A person credentialed to practice physical therapy or as a physical therapist assistant in another jurisdiction of the United States or in another country who is teaching physical therapy or demonstrating or providing physical therapy or related services in connection with an educational program in this state;

(5) A person credentialed to practice physical therapy in another jurisdiction of the United States or in another country who, by contract or employment, is providing physical therapy or related services in this state to individuals affiliated with established athletic teams, athletic organizations, or performing arts companies while such teams, organizations, or companies are present and temporarily practicing, competing, or performing in this state; or

(6) A person employed by a school district, educational service unit, or other public or private educational institution or entity serving prekindergarten through twelfth grade students who is providing personal assistance services, including mobility and transfer activities, such as assisting with ambulation with and without aids; positioning in adaptive equipment; application of braces; encouraging active range-of-motion exercises; assisting with passive range-of-motion exercises; assisting with transfers with or without mechanical devices; and such other personal assistance services based on individual needs as are suitable to providing an appropriate educational program.

Source: Laws 2006, LB 994, § 138; R.S.Supp.,2006, § 71-1,382; Laws 2007, LB463, § 1013. Operative date December 1, 2008.

38-2921 Physical therapy; license; qualifications. Every applicant for a license to practice physical therapy shall:

(1) Present proof of completion of an approved educational program;

(2) In the case of an applicant who has been trained as a physical therapist in a foreign country, (a) present documentation of completion of a course of professional instruction substantially equivalent to an approved program accredited by the Commission on Accreditation in Physical Therapy Education or by an equivalent accrediting agency as determined by the board and (b) present proof of proficiency in the English language; and

(3) Successfully complete an examination approved by the department, with the recommendation of the board.

Source: Laws 1957, c. 298, § 3, p. 1075; Laws 1988, LB 1100, § 140; Laws 1990, LB 1064, § 16; Laws 1999, LB 828, § 169; R.S.1943, (2003), § 71-2803; Laws 2006, LB 994, § 139; R.S.Supp.,2006, § 71-1,383; Laws 2007, LB463, § 1014.
Operative date December 1, 2008.

38-2922 Physical therapist assistant; certificate; qualifications. Every applicant for a certificate to practice as a physical therapist assistant shall:

(1) Present proof of completion of an approved educational program; and

(2) Successfully complete an examination approved by the department, with the recommendation of the board.

Source: Laws 2006, LB 994, § 140; R.S.Supp.,2006, § 71-1,384; Laws 2007, LB463, § 1015.
Operative date December 1, 2008.

38-2923 Applicant; continuing competency requirements. An applicant for licensure to practice as a physical therapist who has met the education and examination requirements in section 38-2921 or to practice as a physical therapist assistant who has met the education and examination requirements in section 38-2922, 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, § 1016.
Operative date December 1, 2008.

38-2924 Applicant; reciprocity; continuing competency requirements. An applicant for licensure to practice as a physical therapist or to practice as a physical therapist assistant 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, § 1017.
Operative date December 1, 2008.

38-2925 Fees. The department shall establish and collect fees for credentialing activities as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1018.
Operative date December 1, 2008.

38-2926 Approved program for education and training. The board may approve programs for physical therapy or physical therapist assistant education and training. Such approval may be based on the program's accreditation by the Commission on Accreditation in Physical Therapy Education or equivalent standards established by the board.

Source: Laws 1957, c. 298, § 4, p. 1076; Laws 1988, LB 1100, § 142; Laws 1999, LB 828, § 170; Laws 2001, LB 209, § 28; R.S.1943, (2003), § 71-2804; Laws 2006, LB 994, § 144; R.S.Supp.,2006, § 71-1,388; Laws 2007, LB463, § 1019.
Operative date December 1, 2008.

38-2927 Physical therapist assistant; perform physical therapy services; when; limitations; supervising physical therapist; powers and duties. (1) A physical therapist assistant may perform physical therapy services under the general supervision of a physical therapist, except that no physical therapist assistant shall perform the following:

(a) Interpretation of physician referrals;

(b) Development of a plan of care;

(c) Initial evaluations or reevaluation of patients;

(d) Readjustment of a plan of care without consultation with the supervising physical therapist; or

(e) Discharge planning for patients.

(2) A physical therapist may provide general supervision for no more than two physical therapist assistants. A physical therapist shall not establish a satellite office at which a physical therapist assistant provides care without the general supervision of the physical therapist.

(3) A physical therapist shall reevaluate or reexamine on a regular basis each patient receiving physical therapy services from a physical therapist assistant under the general supervision of the physical therapist.

(4) A supervising physical therapist and the physical therapist assistant under general supervision shall review the plan of care on a regular basis for each patient receiving physical therapy services from the physical therapist assistant.

(5) A physical therapist assistant may document physical therapy services provided by the physical therapist assistant without the signature of the supervising physical therapist.

(6) A physical therapist assistant may act as a clinical instructor for physical therapist assistant students in an approved educational program.

Source: Laws 1979, LB 355, § 3; R.S.1943, (2003), § 71-2810; Laws 2006, LB 994, § 141; R.S.Supp.,2006, § 71-1,385; Laws 2007, LB463, § 1020.
Operative date December 1, 2008.

38-2928 Physical therapist; duties. (1) For each patient under his or her care, a physical therapist shall:

(a) Be responsible for managing all aspects of physical therapy services provided to the patient and assume legal liability for physical therapy and related services provided under his or her supervision;

(b) Provide an initial evaluation and documentation of the evaluation;

(c) Provide periodic reevaluation and documentation of the reevaluation;

(d) Provide documentation for discharge, including the patient's response to therapeutic intervention at the time of discharge; and

(e) Be responsible for accurate documentation and billing for services provided.

(2) For each patient under his or her care on each date physical therapy services are provided to such patient, a physical therapist shall:

(a) Provide all therapeutic interventions that require the expertise of a physical therapist; and

(b) Determine the appropriate use of physical therapist assistants or physical therapy aides.

Source: Laws 2006, LB 994, § 142; R.S.Supp.,2006, § 71-1,386; Laws 2007, LB463, § 1021. Operative date December 1, 2008.

38-2929 Physical therapy aide; authorized activities. A physical therapy aide may perform treatment-related and non-treatment-related tasks under the supervision of a physical therapist or a physical therapist assistant.

Source: Laws 2006, LB 994, § 143; R.S.Supp.,2006, § 71-1,387; Laws 2007, LB463, § 1022. Operative date December 1, 2008.

ARTICLE 30

PODIATRY PRACTICE ACT

Section.

38-3001 Act, how cited. Sections 38-3001 to 38-3012 shall be known and may be cited as the Podiatry Practice Act.

Source: Laws 2007, LB463, § 1023.
Operative date December 1, 2008.

38-3002 Definitions, where found. For purposes of the Podiatry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3003 to 38-3005 apply.

Source: Laws 2007, LB463, § 1024.
Operative date December 1, 2008.

38-3003 Board, defined. Board means the Board of Podiatry.

Source: Laws 2007, LB463, § 1025.
Operative date December 1, 2008.

38-3004 Podiatrist, defined. Podiatrist means a physician of the foot, ankle, and related governing structures.

Source: Laws 2007, LB463, § 1026.
Operative date December 1, 2008.

38-3005 Practice of podiatry, defined. Practice of podiatry means the diagnosis or medical, physical, or surgical treatment of the ailments of the human foot, ankle, and related governing structures except (1) the amputation of the forefoot, (2) the general medical treatment of any systemic disease causing manifestations in the foot, and (3) the administration of anesthetics other than local.

Source: Laws 2007, LB463, § 1027.
Operative date December 1, 2008.

38-3006 Practice of podiatry. The following persons shall be deemed to be practicing podiatry: Persons who publicly profess to be podiatrists or who publicly profess to assume the duties incident to the practice of podiatry.

Source: Laws 1927, c. 167, § 72, p. 473; C.S.1929, § 71-1001; R.S.1943, § 71-173; Laws 1947, c. 228, § 1, p. 723; Laws 1961, c. 337, § 9, p. 1055; Laws 1974, LB 778, § 1; Laws 1976, LB 25, § 1; Laws 1983, LB 541, § 1; Laws 2001, LB 25, § 2; R.S.1943, (2003), § 71-173; Laws 2007, LB463, § 1028.
Operative date December 1, 2008.

38-3007 Podiatry; practice; persons excepted. The Podiatry Practice Act shall not be construed to include (1) licensed physicians and surgeons or licensed osteopathic physicians, (2) physicians and surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment, (3) students who have not graduated from a school of podiatry and are enrolled in an approved and accredited school of podiatry when the services performed are a part of the course of study and are under the direct supervision of a licensed podiatrist, or (4) graduates of a school of podiatry currently enrolled in a postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

Source: Laws 1927, c. 167, § 73, p. 473; C.S.1929, § 71-1002; R.S.1943, § 71-174; Laws 1989, LB 342, § 13; Laws 1990, LB 1064, § 10; Laws 1995, LB 173, § 1; R.S.1943, (2003), § 71-174; Laws 2007, LB463, § 1029.
Operative date December 1, 2008.

38-3008 Podiatry; license; qualifications. Every applicant for an initial license to practice podiatry shall (1) present proof of graduation from a school of chiropody or podiatry approved by the board, (2) present proof of completion of a minimum one-year postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, (3) pass a written examination which consists of (a) parts I and II of the examination given by the National Board of Podiatric Medical Examiners and (b) the written examination approved by the Board of Podiatry, and (4) present proof satisfactory to the board that he or she, within two years immediately preceding the application for licensure, (a) has been in the active practice of the profession of podiatry under a license in another state or territory of the United States or the District of Columbia for a period of one year, (b) has completed at least one year of a postgraduate residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, or (c) has completed continuing competency in podiatry approved by the board.

Source: Laws 1927, c. 167, § 74, p. 473; C.S.1929, § 71-1003; R.S.1943, § 71-175; Laws 1961, c. 337, § 10, p. 1055; Laws 1967, c. 438, § 5, p. 1351; Laws 1988, LB 1100, § 28; Laws 1990, LB 1064, § 11; Laws 1995, LB 173, § 2; Laws 1999, LB 828, § 61; Laws 2003, LB 242, § 33; R.S.1943, (2003), § 71-175; Laws 2007, LB463, § 1030.
Operative date December 1, 2008.

38-3009 Fees. The department shall establish and collect fees for credentialing under the Podiatry Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1031.
Operative date December 1, 2008.

38-3010 Schools of podiatry; approval; requirements. No school of podiatry shall be approved by the board unless the school is accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

Source: Laws 1927, c. 167, § 75, p. 474; C.S.1929, § 71-1004; R.S.1943, § 71-176; Laws 1947, c. 228, § 2, p. 724; Laws 1961, c. 337, § 11, p. 1056; Laws 1967, c. 438, § 6, p. 1352; Laws 1973, LB 52, § 1; Laws 1995, LB 173, § 3; R.S.1943, (2003), § 71-176; Laws 2007, LB463, § 1032.
Operative date December 1, 2008.

38-3011 Podiatry; surgery; restrictions. A podiatrist shall not perform surgery on the ankle other than in a licensed hospital or ambulatory surgical center, and a podiatrist who performs surgery on the ankle in a licensed hospital or ambulatory surgical center shall have successfully completed an advanced postdoctoral surgical residency program of at least one year's duration which is recognized as suitable for that purpose by the board.

No podiatrist initially licensed in this state on or after September 1, 2001, shall perform surgery on the ankle unless such person has successfully completed an advanced postdoctoral

surgical residency program of at least two years' duration which is recognized as suitable for that purpose by the board.

Source: Laws 2001, LB 25, § 3; R.S.1943, (2003), § 71-174.02; Laws 2007, LB463, § 1033. Operative date December 1, 2008.

38-3012 Employee of licensed podiatrist; radiography practices; requirements. (1) A person employed exclusively in the office or clinic of a licensed podiatrist shall not perform any of the functions described in section 38-1916 as a part of such employment unless the person is (a) licensed as a limited radiographer under the Medical Radiography Practice Act or (b) certified as provided in this section.

(2) The department, with the recommendation of the board, may certify a person to perform medical radiography on the anatomical regions of the ankle and foot if such person (a) has completed a fifteen-hour course of instruction, approved by the board, on radiation hygiene and podiatric radiological practices, including radiation health and safety, lower extremity anatomy, physics, concepts, physiology, techniques, positioning, equipment maintenance, and minimization of radiation exposure, and (b) passed a competency examination approved by the board. A person who has not passed the competency examination after three attempts shall successfully complete a remedial course of instruction in medical radiography, approved by the board, prior to any further attempts to pass the competency examination.

Source: Laws 1995, LB 406, § 39; Laws 1999, LB 828, § 63; Laws 2003, LB 245, § 12; R.S.1943, (2003), § 71-176.01; Laws 2007, LB463, § 1034. Operative date December 1, 2008.

Cross Reference

Medical Radiography Practice Act, see section 38-1901.

ARTICLE 31

PSYCHOLOGY PRACTICE ACT

Section.

38-3101 Act, how cited. Sections 38-3101 to 38-3132 shall be known and may be cited as the Psychology Practice Act.

Source: Laws 2007, LB463, § 1035.
Operative date December 1, 2008.

38-3102 Definitions, where found. For purposes of the Psychology Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3103 to 38-3110 apply.

Source: Laws 1994, LB 1210, § 63; Laws 1999, LB 366, § 10; R.S.1943, (2003), § 71-1,206.01; Laws 2007, LB463, § 1036.
Operative date December 1, 2008.

38-3103 Board, defined. Board means the Board of Psychology.

Source: Laws 1994, LB 1210, § 64; Laws 1999, LB 828, § 136; R.S.1943, (2003), § 71-1,206.02; Laws 2007, LB463, § 1037.
Operative date December 1, 2008.

38-3104 Client or patient, defined. Client or patient means a recipient of psychological services within the context of a professional relationship. In the case of individuals with legal guardians, including minors and incompetent adults, the legal guardian shall also be considered a client or patient for decisionmaking purposes.

Source: Laws 1994, LB 1210, § 65; R.S.1943, (2003), § 71-1,206.03; Laws 2007, LB463, § 1038. Operative date December 1, 2008.

38-3105 Code of conduct, defined. Code of conduct means that set of regulatory rules of professional conduct which has been adopted by the board to protect the public welfare by providing rules that govern a professional's behavior in the professional relationship.

Source: Laws 1994, LB 1210, § 66; R.S.1943, (2003), § 71-1,206.04; Laws 2007, LB463, § 1039. Operative date December 1, 2008.

38-3106 Institution of higher education, defined. Institution of higher education means a university, professional school, or other institution of higher learning that:

(1) In the United States, is regionally accredited by a regional or professional accrediting organization recognized by the United States Department of Education;

(2) In Canada, holds a membership in the Association of Universities and Colleges of Canada; or

(3) In other countries, is accredited by the respective official organization having such authority.

Source: Laws 1994, LB 1210, § 68; R.S.1943, (2003), § 71-1,206.06; Laws 2007, LB463, § 1040. Operative date December 1, 2008.

38-3107 Mental and emotional disorder, defined. Mental and emotional disorder means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and is associated with present distress or disability or with significantly increased risk of suffering death, pain, disability, or an important loss of freedom. Such disorders may take many forms and have varying causes but must be considered a manifestation of behavioral, psychological, or biological dysfunction in the person. Reasonable descriptions of the kinds and degrees of mental and emotional disorders may be found in the revisions of accepted nosologies such as the International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders.

Source: Laws 1994, LB 1210, § 69; R.S.1943, (2003), § 71-1,206.07; Laws 2007, LB463, § 1041. Operative date December 1, 2008.

38-3108 Practice of psychology, defined. (1) Practice of psychology means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health.

(2) The practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and psychophysiological and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis

and therapy; diagnosis and treatment of mental and emotional disorders, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; psychoeducational evaluation, therapy, remediation, and consultation; and supervision of qualified individuals performing services specified in this section.

(3) Psychological services may be rendered to individuals, families, groups, organizations, institutions, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Source: Laws 1994, LB 1210, § 70; R.S.1943, (2003), § 71-1,206.08; Laws 2007, LB463, § 1042. Operative date December 1, 2008.

38-3109 Psychologist, defined. Psychologist means a person licensed to engage in the practice of psychology in this or another jurisdiction. The terms certified, registered, chartered, or any other term chosen by a jurisdiction to authorize the autonomous practice of psychology shall be considered equivalent terms.

Source: Laws 1994, LB 1210, § 71; R.S.1943, (2003), § 71-1,206.09; Laws 2007, LB463, § 1043. Operative date December 1, 2008.

38-3110 Representation as a psychologist, defined. Representation as a psychologist means that the person uses any title or description of services which incorporates the words psychology, psychological, or psychologist or which implies that he or she possesses expert qualification in any area of psychology or that the person offers to individuals or to groups of individuals services defined as the practice of psychology.

Source: Laws 1994, LB 1210, § 72; R.S.1943, (2003), § 71-1,206.10; Laws 2007, LB463, § 1044. Operative date December 1, 2008.

38-3111 Psychology; references; how construed. (1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Psychology Practice Act, in the Sex Offender Commitment Act, and in section 44-513 means only psychologists licensed under section 38-3114 and does not mean persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Source: Laws 1994, LB 1210, § 76; Laws 1999, LB 366, § 12; Laws 2006, LB 1199, § 32; R.S.Supp.,2006, § 71-1,206.14; Laws 2007, LB463, § 1045. Operative date December 1, 2008.

Cross Reference
Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

38-3112 Board; membership; qualifications. The board shall consist of five professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165, except that two of the five years of experience for professional members may have been served in teaching or research.

Source: Laws 2007, LB463, § 1046.
Operative date December 1, 2008.

38-3113 Other practices and activities; act, how construed. Nothing in the Psychology Practice Act shall be construed to prevent:

(1) The teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions if such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in the act shall prevent the provision of expert testimony by psychologists who are otherwise exempted by the act. Persons holding a doctoral degree in psychology from an institution of higher education may use the title psychologist in conjunction with the activities permitted by this subdivision;

(2) Members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics and within the scope of practice as set out in the statutes regulating their professional practice if they do not represent themselves to be psychologists;

(3) Duly recognized members of the clergy from functioning in their ministerial capacity if they do not represent themselves to be psychologists or their services as psychological;

(4) Persons who are certified as school psychologists by the State Board of Education from using the title school psychologist and practicing psychology as defined in the Psychology Practice Act if such practice is restricted to regular employment within a setting under the jurisdiction of the State Board of Education. Such individuals shall be employees of the educational setting and not independent contractors providing psychological services to educational settings; or

(5) Any of the following persons from engaging in activities defined as the practice of psychology if they do not represent themselves by the title psychologist, if they do not use terms other than psychological trainee, psychological intern, psychological resident, or psychological assistant to refer to themselves, and if they perform their activities under the supervision and responsibility of a psychologist in accordance with the rules and regulations adopted and promulgated under the Psychology Practice Act:

(a) A matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;

(b) An individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the act; or

(c) An individual with a master's degree in clinical, counseling, or educational psychology or an educational specialist degree in school psychology who administers and scores and may develop interpretations of psychological testing under the supervision of a psychologist. Such individuals shall be deemed to be conducting their duties as an extension of the legal and professional authority of the supervising psychologist and shall not independently provide interpretive information or treatment recommendations to clients or other health care professionals prior to obtaining appropriate supervision. The department, with the recommendation of the board, may adopt and promulgate rules and regulations governing the conduct and supervision of persons referred to in this subdivision, including the number of such persons that may be supervised by a licensed psychologist. Persons who have carried out the duties described in this subdivision as part of their employment in institutions accredited by the Department of Health and Human Services, the State Department of Education, or the Department of Correctional Services for a period of two years prior to September 1, 1994, may use the title psychologist associate in the context of their employment in such settings. Use of the title shall be restricted to duties described in this subdivision, and the title shall be used in its entirety. Partial or abbreviated use of the title and use of the title beyond what is specifically authorized in this subdivision shall constitute the unlicensed practice of psychology.

Source: Laws 1994, LB 1210, § 87; Laws 1996, LB 1044, § 475; Laws 1999, LB 366, § 13; R.S.1943, (2003), § 71-1,206.25; Laws 2007, LB463, § 1047.
Operative date December 1, 2008.

38-3114 Applicant for license; qualifications. An applicant for licensure as a psychologist shall:

(1) Possess a doctoral degree from a program of graduate study in professional psychology from an institution of higher education. The degree shall be obtained from a program of graduate study in psychology that meets the standards of accreditation adopted by the American Psychological Association. Any applicant from a doctoral program in psychology that does not meet such standards shall present a certificate of retraining from a program of respecialization that does meet such standards;

(2) Prior to taking the examination, demonstrate that he or she has completed two years of supervised professional experience. One year of such experience shall be an internship meeting the standards of accreditation adopted by the American Psychological Association, and one year shall be supervised postdoctoral experience. The criteria for appropriate supervision shall be determined by the board. Postdoctoral experience shall be compatible with the knowledge and skills acquired during formal doctoral or postdoctoral education in accordance with professional requirements and relevant to the intended area of practice; and

(3) Pass an examination. The board shall approve and the board or department shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examination and shall require a written examination, an oral examination, or both a written examination and an oral examination of each candidate for licensure. The board may approve a national standardized examination and any examination developed by the board.

Source: Laws 1994, LB 1210, § 77; R.S.1943, (2003), § 71-1,206.15; Laws 2007, LB463, § 1048. Operative date December 1, 2008.

38-3115 Waiver of examination; when. The department may waive all or portions of the examination required by section 38-3114 (1) if a psychologist has been licensed in another jurisdiction and if the requirements for licensure in that jurisdiction are equal to or exceed the requirements for licensure in Nebraska, (2) for psychologists meeting the requirements of section 38-3117, or (3) for an applicant who is board-certified in an area of professional psychology by the American Board of Professional Psychology.

Source: Laws 1994, LB 1210, § 78; R.S.1943, (2003), § 71-1,206.16; Laws 2007, LB463, § 1049. Operative date December 1, 2008.

38-3116 Special license; supervisory relationship; application; contents; use of title; disclosure. (1) Any psychological practice that involves the diagnosis and treatment of major mental and emotional disorders by a person holding a special license shall be done under the supervision of a licensed psychologist as determined by the board. A psychologist holding a special license shall not supervise mental health practitioners or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

(2) An application for a supervisory relationship shall be submitted to the department. The application shall contain:

(a) A general description of the supervisee's practice and the plan of supervision;

(b) A statement by the supervisor that he or she has the necessary experience and training to supervise this area of practice; and

(c) A statement by the supervisor that he or she accepts the legal and professional responsibility for the supervisee's practice with individuals having major mental and emotional disorders.

(3) Psychologists practicing with special licenses may continue to use the title licensed psychologist but shall disclose supervisory relationships to clients or patients for whom supervision is required and to third-party payors when relevant. Psychologists who wish to continue supervisory relationships existing immediately prior to September 1, 1994, with qualified physicians may do so if a letter as described in this section as it existed prior to December 1, 2008, was received by the board within three months after September 1, 1994.

Source: Laws 1994, LB 1210, § 80; Laws 1995, LB 406, § 19; Laws 1996, LB 1044, § 474; Laws 2006, LB 1199, § 33; R.S.Supp.,2006, § 71-1,206.18; Laws 2007, LB296, § 358; Laws 2007, LB463, § 1050.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 358, with LB 463, section 1050, to reflect all amendments.
Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

38-3117 Applicant with prior experience; issuance of license; conditions. Notwithstanding section 38-3114, the department shall license an applicant who:

(1) Has at least twenty years of licensure to practice psychology in a United States or Canadian jurisdiction when the license was based on a doctoral degree;

(2) Has had no disciplinary sanction during the entire period of licensure; and

(3) Has passed the Nebraska board-developed examination.

Source: Laws 1994, LB 1210, § 82; R.S.1943, (2003), § 71-1,206.20; Laws 2007, LB463, § 1051. Operative date December 1, 2008.

38-3118 Reciprocal license; conditions. Notwithstanding section 38-3114, the department may issue a license as a psychologist to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by the department, with the recommendation of the board, with the board or boards of another jurisdiction or multiple jurisdictions.

Source: Laws 1994, LB 1210, § 83; R.S.1943, (2003), § 71-1,206.21; Laws 2007, LB463, § 1052. Operative date December 1, 2008.

38-3119 Temporary practice permitted; when. Nothing in the Psychology Practice Act shall be construed to prohibit the practice of psychology in this state by a person holding a doctoral degree in psychology from an institution of higher education who is licensed as a psychologist under the laws of another jurisdiction if the requirements for a license in the other jurisdiction are equal to or exceed the requirements for licensure in Nebraska and if the person provides no more than an aggregate of thirty days of professional services as a psychologist per year as defined in the rules and regulations. Psychologists practicing under this section shall notify the department of the nature and location of their practice and provide evidence of their licensure in another jurisdiction.

Upon determination that the applicant has met the requirements of this section, the department shall issue a letter permitting the practice. An individual's permission to practice under this section may be revoked if it is determined by the department that he or she has engaged in conduct defined as illegal, unprofessional, or unethical under the statutes, rules, or regulations governing the practice of psychology in Nebraska.

Source: Laws 1994, LB 1210, § 84; R.S.1943, (2003), § 71-1,206.22; Laws 2007, LB463, § 1053. Operative date December 1, 2008.

38-3120 Temporary practice pending licensure permitted; when. A psychologist licensed under the laws of another jurisdiction may be authorized by the department to practice psychology for a maximum of one year if the psychologist has made application to the department for licensure and has met the educational and experience requirements for licensure in Nebraska, if the requirements for licensure in the former jurisdiction are equal to or exceed the requirements for licensure in Nebraska, and if the psychologist is not the subject of a past or pending disciplinary action in another jurisdiction. Denial of licensure shall terminate this authorization.

Source: Laws 1994, LB 1210, § 85; R.S.1943, (2003), § 71-1,206.23; Laws 2007, LB463, § 1054. Operative date December 1, 2008.

38-3121 Reciprocity. The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to practice as a psychologist to a person who meets the requirements of the Psychology Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board.

Source: Laws 2007, LB463, § 1055. Operative date December 1, 2008.

38-3122 Provisional license; requirements. A person who needs to obtain the required one year of supervised postdoctoral experience in psychology pursuant to subdivision (2) of section 38-3114 shall obtain a provisional license to practice psychology. An applicant for a provisional license to practice psychology shall:

(1) Have a doctoral degree from an institution of higher education in a program of graduate study in professional psychology that meets the standards of accreditation adopted by the American Psychological Association or its equivalent. If the program is not accredited by the American Psychological Association, it is the responsibility of the applicant to provide evidence of equivalence. Any applicant from a program that does not meet such standards shall present a certificate of retraining from a program of respecialization that does meet such standards;

(2) Have completed one year of supervised professional experience in an internship as provided in subdivision (2) of section 38-3114;

(3) Apply prior to beginning the year of registered supervised postdoctoral experience; and

(4) Submit to the department:

(a) An official transcript showing proof of a doctoral degree in psychology from an institution of higher education;

(b) A certified copy of the applicant's birth certificate or other evidence of having attained the age of nineteen years; and

(c) A registration of supervisory relationship pursuant to section 38-3116.

Source: Laws 1999, LB 366, § 1; R.S.1943, (2003), § 71-1,206.32; Laws 2007, LB463, § 1056. Operative date December 1, 2008.

38-3123 Provisional license; approve or deny application. The department shall approve or deny a complete application for a provisional license to practice psychology within one hundred fifty days after receipt of the application.

Source: Laws 1999, LB 366, § 2; R.S.1943, (2003), § 71-1,206.33; Laws 2007, LB463, § 1057.
Operative date December 1, 2008.

38-3124 Provisional license; title; duties. A psychologist practicing with a provisional license shall use the title Provisionally Licensed Psychologist. A provisionally licensed psychologist shall disclose supervisory relationships to clients or patients for whom supervision is required and to third parties when relevant. A provisionally licensed psychologist shall not supervise other mental health professionals or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Source: Laws 1999, LB 366, § 3; Laws 2006, LB 1199, § 34; R.S.Supp., 2006, § 71-206.34; Laws 2007, LB463, § 1058.
Operative date December 1, 2008.

Cross Reference

Nebraska Mental Health Commitment Act, see section 71-901.
Sex Offender Commitment Act, see section 71-1201.

38-3125 Provisional license; expiration. A provisional license to practice psychology expires upon receipt of a license to practice psychology or two years after the date of issuance, whichever occurs first.

Source: Laws 1999, LB 366, § 4; R.S.1943, (2003), § 71-1,206.35; Laws 2007, LB463, § 1059.
Operative date December 1, 2008.

38-3126 Fees. The department shall establish and collect fees for credentialing under the Psychology Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1060.
Operative date December 1, 2008.

38-3127 Additional grounds for disciplinary action. In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential subject to the Psychology 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 licensee fails to disclose the information required by section 38-3124.

Source: Laws 2007, LB463, § 1061.
Operative date December 1, 2008.

38-3128 Limitation of practice; board; duties. The board shall ensure through rules and regulations and enforcement that psychologists limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Source: Laws 1994, LB 1210, § 86; R.S.1943, (2003), § 71-1,206.24; Laws 2007, LB463, § 1062.
Operative date December 1, 2008.

38-3129 Code of conduct. A psychologist and anyone under his or her supervision shall conduct his or her professional activities in conformity with the code of conduct.

Source: Laws 1994, LB 1210, § 88; R.S.1943, (2003), § 71-1,206.26; Laws 2007, LB463, § 1063.
Operative date December 1, 2008.

38-3130 Representation as a psychologist; unlawful practice; violation; penalty. (1) It shall be a violation of the Psychology Practice Act for any person not licensed in accordance with the act to represent himself or herself as a psychologist. It shall be a violation of the act for any person not licensed in accordance with the act to engage in the practice of psychology whether practicing as an individual, firm, partnership, limited liability company, corporation, agency, or other entity.

(2) Any person who represents himself or herself as a psychologist in violation of the act or who engages in the practice of psychology in violation of the act shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

(3) Any person filing or attempting to file, as his or her own, a diploma or license of another or a forged affidavit of identification shall be guilty of a Class IV felony.

Source: Laws 1994, LB 1210, § 89; Laws 1999, LB 366, § 14; R.S.1943, (2003), § 71-1,206.27; Laws 2007, LB463, § 1064.
Operative date December 1, 2008.

38-3131 Confidentiality; privilege; exceptions. (1) The confidential relations and communications between psychologists and their clients and patients shall be on the same basis as those between physicians and their clients and patients as provided in section 27-504.

(2) In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a client or patient, or his or her legal guardian or personal representative, may refuse to disclose or may prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist, or to a person reasonably believed by the client or patient to be a psychologist, or the psychologist's or person's agents, for the purpose of diagnosis, evaluation, or treatment of any mental and emotional disorder. In the absence of evidence to the contrary, the psychologist shall be presumed to be authorized to claim the privilege on the client's or patient's behalf.

(3) This privilege may not be claimed by the client or patient, or on his or her behalf by authorized persons, in the following circumstances:

(a) When abuse or harmful neglect of children, the elderly, or disabled or incompetent individuals is known or reasonably suspected;

(b) When the validity of a will of a former client or patient of the psychologist is contested;

(c) When such information is necessary for the psychologist to defend against a malpractice action brought by the client or patient;

(d) When an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;

(e) When an immediate threat of self-inflicted injury is disclosed to the psychologist;

(f) When the client or patient, by alleging mental or emotional damages in litigation, puts his or her mental state in issue;

(g) When the client or patient is examined pursuant to court order;

(h) When the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the client or patient or any other cause of action arising out of the professional relationship; or

(i) In the context of investigations and hearings brought by the client or patient and conducted by the department, when violations of the Psychology Practice Act are at issue.

Source: Laws 1994, LB 1210, § 91; Laws 1999, LB 366, § 16; R.S.1943, (2003), § 71-1,206.29; Laws 2007, LB463, § 1065.
Operative date December 1, 2008.

38-3132 Duty to warn; limitation; immunity. (1) No monetary liability and no cause of action shall arise against any psychologist for failing to warn of and protect from a client's or patient's threatened violent behavior or failing to predict and warn of and protect from a client's or patient's violent behavior except when the client or patient has communicated to the psychologist a serious threat of physical violence against a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the psychologist if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise against any person who is a psychologist for a confidence disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section in accordance with subsection (2) of this section.

Source: Laws 1994, LB 1210, § 92; R.S.1943, (2003), § 71-1,206.30; Laws 2007, LB463, § 1066.
Operative date December 1, 2008.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Section.

38-3201 Act, how cited. Sections 38-3201 to 38-3216 shall be known and may be cited as the Respiratory Care Practice Act.

Source: Laws 2007, LB463, § 1067.
Operative date December 1, 2008.

38-3202 Definitions, where found. For purposes of the Respiratory Care Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3203 to 38-3206 apply.

Source: Laws 2007, LB463, § 1068.
Operative date December 1, 2008.

38-3203 Board, defined. Board means the Board of Respiratory Care Practice.

Source: Laws 2007, LB463, § 1069.
Operative date December 1, 2008.

38-3204 Medical director, defined. Medical director means a licensed physician who has the qualifications as described in section 38-3214.

Source: Laws 2007, LB463, § 1070.
Operative date December 1, 2008.

38-3205 Respiratory care, defined. Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care shall not be limited to a hospital setting and shall include the therapeutic and diagnostic use of medical gases, administering apparatus, humidification and aerosols, ventilatory assistance and ventilatory control, postural drainage, chest physiotherapy and breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, and maintenance of nasal or oral endotracheal tubes. Respiratory care shall also include the administration of aerosol and inhalant medications to the cardiorespiratory system and specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research. Such techniques shall include, but not be limited to, measurement of ventilatory volumes, pressures,

and flows, measurement of physiologic partial pressures, pulmonary function testing, and hemodynamic and other related physiological monitoring of the cardiopulmonary system.

Source: Laws 2007, LB463, § 1071.
Operative date December 1, 2008.

38-3206 Respiratory care practitioner, defined. Respiratory care practitioner means:

(1) Any person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care to patients of all ages with varied cardiopulmonary diseases and to patients in need of critical care and who is capable of serving as a resource to the physician and other health professionals in relation to the technical aspects of respiratory care including effective and safe methods for administering respiratory care; and

(2) A person capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

Source: Laws 1986, LB 277, § 9; Laws 1999, LB 828, § 138; Laws 2003, LB 242, § 61; R.S.1943, (2003), § 71-1,227; Laws 2007, LB463, § 1072.
Operative date December 1, 2008.

38-3207 Board; membership; qualifications. Membership on the board shall consist of two respiratory care practitioners, one physician, and one public member.

Source: Laws 2007, LB463, § 1073.
Operative date December 1, 2008.

38-3208 Practices not requiring licensure. The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074.
Operative date December 1, 2008.

38-3209 License; application; requirements. (1) An applicant for a license to practice respiratory care shall submit to the department written evidence that the applicant has completed a respiratory care educational program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care or its successor or by an accrediting agency approved by the board.

(2) In order to be licensed, initial applicants shall pass an examination approved by the board.

Source: Laws 1986, LB 277, § 13; Laws 2002, LB 1062, § 38; R.S.1943, (2003), § 71-1,231; Laws 2007, LB463, § 1075.
Operative date December 1, 2008.

38-3210 Practicing respiratory care practitioners; license issued; conditions. The department, with the recommendation of the board, shall issue a license to perform respiratory care to an applicant who, on or before July 17, 1986, has passed the Certified Respiratory Therapy Technician or Registered Respiratory Therapist examination administered by the National Board for Respiratory Care or the appropriate accrediting agency acceptable to the board.

Source: Laws 1986, LB 277, § 15; Laws 1988, LB 1100, § 84; Laws 2003, LB 245, § 15; R.S.1943, (2003), § 71-1,233; Laws 2007, LB463, § 1076.
Operative date December 1, 2008.

38-3211 Applicant for licensure; continuing competency requirements. An applicant for licensure to practice respiratory care who has met the education and examination requirements in section 38-3209, 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, § 1077.
Operative date December 1, 2008.

38-3212 Applicant for licensure; reciprocity; continuing competency requirements. An applicant for licensure to practice respiratory care 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, § 1078.
Operative date December 1, 2008.

38-3213 Fees. The department shall establish and collect fees for credentialing under the Respiratory Care Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1079.
Operative date December 1, 2008.

38-3214 Respiratory care service; requirements. Any health care facility or home care agency providing inpatient or outpatient respiratory care service shall designate a medical director, who shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of respiratory problems. Such physician shall (1) be an active medical staff member of a licensed health care facility, (2) whenever possible be qualified by special training or experience in the management of acute and chronic respiratory disorders, and (3) be competent to monitor and assess the quality, safety, and appropriateness of the respiratory care services which are being provided. The medical director shall be accessible to and assure the competency of respiratory care practitioners and shall require that respiratory care be ordered by a physician who has medical responsibility for any patient that needs such care.

Source: Laws 1986, LB 277, § 11; R.S.1943, (2003), § 71-1,229; Laws 2007, LB463, § 1080.
Operative date December 1, 2008.

38-3215 Practice of respiratory care; limitations. The practice of respiratory care shall be performed only under the direction of a medical director and upon the order of a licensed physician.

Source: Laws 1986, LB 277, § 12; R.S.1943, (2003), § 71-1,230; Laws 2007, LB463, § 1081.
Operative date December 1, 2008.

38-3216 Respiratory care practitioner; subject to facility rules and regulations; when. In the event a respiratory care practitioner renders respiratory care in a hospital or health care facility, he or she shall be subject to the rules and regulations of that facility. Such rules and regulations may include, but not be limited to, reasonable requirements that the respiratory care practitioner maintain professional liability insurance with such coverage and limits as may be established by the hospital or other health care facility upon the recommendation of the medical staff.

Source: Laws 1986, LB 277, § 18; R.S.1943, (2003), § 71-1,236; Laws 2007, LB463, § 1082.
Operative date December 1, 2008.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section.

38-3301 Act, how cited. Sections 38-3301 to 38-3330 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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

38-3303 Accredited school of veterinary medicine, defined. Accredited school of veterinary medicine means:

(1) One approved by the board;

(2) A veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent; and

(3) One that conforms to the standards required for accreditation by the American Veterinary Medical Association.

Source: Laws 2007, LB463, § 1085.
Operative date December 1, 2008.

38-3304 Animal, defined. Animal means any animal other than man and includes birds, fish, and reptiles, wild or domestic, living or dead, except domestic poultry.

Source: Laws 2007, LB463, § 1086.
Operative date December 1, 2008.

38-3305 Approved veterinary technician program, defined. Approved veterinary technician program means:

(1) One approved by the board;

(2) A school or college that offers the degree of Veterinary Technician, a degree in veterinary technology, or the equivalent; and

(3) One that conforms to the standards required for accreditation by the American Veterinary Medical Association.

Source: Laws 2007, LB463, § 1087.
Operative date December 1, 2008.

38-3306 Board, defined. Board means the Board of Veterinary Medicine and Surgery.

Source: Laws 2007, LB463, § 1088.
Operative date December 1, 2008.

38-3307 Direct supervision, defined. Direct supervision means that the supervisor is on the premises and is available to the veterinary technician or unlicensed assistant who is treating the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1089.
Operative date December 1, 2008.

38-3308 Immediate supervision, defined. Immediate supervision means that the supervisor is on the premises and is in direct eyesight and hearing range of the animal and the veterinary technician or unlicensed assistant who is treating the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1090.
Operative date December 1, 2008.

38-3309 Indirect supervision, defined. Indirect supervision means that the supervisor is not on the premises but is easily accessible and has given written or oral instructions for treatment of the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 2007, LB463, § 1091.
Operative date December 1, 2008.

38-3310 Licensed veterinarian, defined. Licensed veterinarian means a person who is validly and currently licensed to practice veterinary medicine and surgery in this state.

Source: Laws 2007, LB463, § 1092.
Operative date December 1, 2008.

38-3311 Licensed veterinary technician, defined. Licensed veterinary technician means an individual who is validly and currently licensed as a veterinary technician in this state.

Source: Laws 2007, LB463, § 1093.
Operative date December 1, 2008.

38-3312 Practice of veterinary medicine and surgery, defined. Practice of veterinary medicine and surgery means:

(1) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy or fertility or for correcting sterility or infertility. The acts described in this subdivision shall not be done without a valid veterinarian-client-patient relationship;

(2) To render advice or recommendation with regard to any act described in subdivision (1) of this section;

(3) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (1) of this section; and

(4) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (1) of this section.

Source: Laws 2007, LB463, § 1094.
Operative date December 1, 2008.

38-3313 Supervision, defined. Supervisor means a licensed veterinarian or licensed veterinary technician as required by statute or rule or regulation for the particular delegated task being performed by a veterinary technician or unlicensed assistant.

Source: Laws 2007, LB463, § 1095.
Operative date December 1, 2008.

38-3314 Unlicensed assistant, defined. Unlicensed assistant means an individual who is not a licensed veterinarian or a licensed veterinary technician who is working in veterinary medicine.

Source: Laws 2007, LB463, § 1096.
Operative date December 1, 2008.

38-3315 Veterinarian, defined. Veterinarian means a person who has received a degree of Doctor of Veterinary Medicine from an accredited school of veterinary medicine or its equivalent.

Source: Laws 2007, LB463, § 1097.
Operative date December 1, 2008.

38-3316 Veterinarian client patient relationship, defined. Veterinarian client patient relationship means that:

(1) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions;

(2) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(3) The veterinarian is readily available or has arranged for emergency coverage and for followup evaluation in the event of adverse reactions or the failure of the treatment regimen.

Source: Laws 2007, LB463, § 1098.
Operative date December 1, 2008.

38-3317 Veterinary medicine and surgery, defined. Veterinary medicine and surgery includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine.

Source: Laws 2007, LB463, § 1099.
Operative date December 1, 2008.

38-3318 Veterinary technician, defined. Veterinary technician means an individual who has received a degree in veterinary technology from an approved veterinary technician program or its equivalent.

Source: Laws 2007, LB463, § 1100.
Operative date December 1, 2008.

38-3319 Board; membership; qualifications. The board shall consist of five members, including three licensed veterinarians, one licensed veterinary technician, and one public member.

Source: Laws 2007, LB463, § 1101.
Operative date December 1, 2008.

38-3320 Board; purpose. The purpose of the board is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that veterinarians and veterinary technicians serving the public meet minimum standards of proficiency and competency; (3) insure that schools of veterinary medicine and surgery and veterinary technician programs meet the educational needs of the students and qualify students to serve the public in a safe and efficient manner; and (4) control the field of veterinary medicine and surgery in the interest of consumer protection.

Source: Laws 1979, LB 96, § 1; Laws 1999, LB 828, § 127; Laws 2000, LB 833, § 2; R.S.1943, (2003) § 71-1,152.01; Laws 2007, LB463, § 1102.
Operative date December 1, 2008.

38-3321 Veterinarian; license; required; exceptions. No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian. 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; or

(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.

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.
Operative date December 1, 2008.

38-3322 Veterinary medicine and surgery; license; application; qualifications. Each applicant for a license to practice veterinary medicine and surgery in this state shall present to the department:

(1) Proof that the applicant is a graduate of an accredited school of veterinary medicine or holds a certificate issued by an entity that determines educational equivalence approved by the board indicating that the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited college of veterinary medicine;

(2) Proof that the applicant has passed an examination approved by 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 1967, c. 439, § 6, p. 1358; Laws 1974, LB 811, § 15; Laws 1975, LB 255, § 1; Laws 1987, LB 473, § 26; Laws 1988, LB 1100, § 58; Laws 2000, LB 833, § 8; Laws 2002, LB 1062, § 35; Laws 2003, LB 242, § 55; R.S.1943, (2003), § 71-1,158; Laws 2007, LB463, § 1104.
Operative date December 1, 2008.

38-3323 Veterinary medicine and surgery; license; validity. Any person holding a valid license to practice veterinary medicine and surgery in this state on October 23, 1967, shall be recognized as a licensed veterinarian and shall be entitled to retain such status so long as he or she complies with the Veterinary Medicine and Surgery Practice Act and the provisions of the Uniform Credentialing Act relating to veterinary medicine and surgery.

Source: Laws 1967, c. 439, § 5, p. 1358; Laws 1988, LB 1100, § 57; R.S.1943, (2003), § 71-1,157; Laws 2007, LB463, § 1105.
Operative date December 1, 2008.

38-3324 Board; disciplinary actions; grounds. A license to practice veterinary medicine and surgery may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee is guilty of any of the acts or offenses specified in sections 38-178 and 38-179 and for any of the following reasons:

(1) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(2) Failure to keep veterinary premises and equipment in a clean and sanitary condition;

(3) Failure to report, as required by law, or making false report of, any contagious or infectious disease;

(4) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates; or

(5) Cruelty to animals.

Source: Laws 1967, c. 439, § 11, p. 1361; Laws 1988, LB 1100, § 62; R.S.1943, (2003), § 71-1,163; Laws 2007, LB463, § 1106.
Operative date December 1, 2008.

38-3325 Veterinary technician; license; requirements. To be a licensed veterinary technician in this state, an individual shall (1) be a graduate of an approved veterinary technician program and (2) receive a passing score on a national examination approved by the board.

Source: Laws 2000, LB 833, § 6; Laws 2002, LB 1021, § 25; Laws 2003, LB 242, § 57; R.S.1943, (2003), § 71-1,165; Laws 2007, LB463, § 1107.
Operative date December 1, 2008.

38-3326 Veterinary technicians; rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations providing for (1) licensure of veterinary technicians meeting the requirements of section 38-3325 and (2) standards for the level of supervision required for particular delegated animal health care tasks and which determine which tasks may be performed by a licensed veterinary technician and by unlicensed assistants. The level of supervision may be immediate supervision, direct supervision, or indirect supervision as determined by the department, with the recommendation of the board, based upon the complexity and requirements of the task.

Source: Laws 2000, LB 833, § 7; Laws 2003, LB 242, § 58; Laws 2003, LB 245, § 14; R.S.1943, (2003), § 71-1,166; Laws 2007, LB463, § 1108.
Operative date December 1, 2008.

38-3327 Applicant; reciprocity; requirements. (1) An applicant for a license to practice veterinary medicine and surgery based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(2) An applicant for a license to practice as a licensed veterinary technician based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

Source: Laws 2007, LB463, § 1109.
Operative date December 1, 2008.

38-3328 Fees. The department shall establish and collect fees for credentialing under the Veterinary Medicine and Surgery Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 1110.
Operative date December 1, 2008.

38-3329 Advertising; offer of services; limitation. (1) Only a licensed veterinarian may advertise or offer his or her services in a manner calculated to lead others to believe that he or she is a licensed veterinarian.

(2) Only a licensed veterinary technician may advertise or offer his or her services in a manner calculated to lead others to believe that he or she is a licensed veterinary technician.

Source: Laws 2007, LB463, § 1111.
Operative date December 1, 2008.

38-3330 Disclosure of information; restrictions. Unless required by any state or local law for contagious or infectious disease reporting or other public health and safety purpose, no veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to disclose any information concerning the veterinarian's care of an animal except under a written authorization or other waiver by the veterinarian's client or pursuant to a court order or a subpoena. A veterinarian who releases information under a written authorization or other waiver by the client or pursuant to a court order or a subpoena is not liable to the client or any other person. The privilege provided by this section is waived to the extent that the veterinarian's client or the owner of the animal places the veterinarian's care and treatment of the animal or the nature and extent of injuries to the animal at issue in any civil or criminal

proceeding. For purposes of this section, veterinarian includes the employees or agents of the licensed veterinarian while acting for or on behalf of such veterinarian.

Source: Laws 2000, LB 833, § 5; R.S.1943, (2003), § 71-1,164; Laws 2007, LB463, § 1112. Operative date December 1, 2008.